

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,

:

Plaintiffs,

:

v.

:

CA No. 76-1326

JERRY WILSON, et al.,

:

Defendants.

:

Volume V

Washington, D.C.

Friday, December 11, 1981

The above-entitled matter came on for trial before
the HONORABLE LOUIS OBERDORFER, United States District Court
Judge, in Courtroom No. 3.

APPEARANCES:

ON BEHALF OF THE PLAINTIFF:

Mr. Daniel M. Schember, Esq.

Ms. J.E. McNeil, Esq.

Ms. Anne Pilsbury, Esq.

ON BEHALF OF THE FEDERAL DEFENDANTS:

Mr. David White, Esq.

Mr. Dennis F. Hoffman, Esq.

ON BEHALF OF THE DISTRICT OF COLUMBIA DEFENDANTS:

Ms. Laura Bonn, Esq.

Mr. George Barclay, Esq.

Official Reporter: Bruce W. Herzfeld

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Year	Month	Day	Time	Place	Remarks
1911	Jan	1	10:00	St. Paul	Arrived
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1911	Jan	4	10:00	St. Paul	Left
1911	Jan	5	10:00	St. Paul	Arrived
1911	Jan	6	10:00	St. Paul	Left
1911	Jan	7	10:00	St. Paul	Arrived
1911	Jan	8	10:00	St. Paul	Left
1911	Jan	9	10:00	St. Paul	Arrived
1911	Jan	10	10:00	St. Paul	Left
1911	Jan	11	10:00	St. Paul	Arrived
1911	Jan	12	10:00	St. Paul	Left
1911	Jan	13	10:00	St. Paul	Arrived
1911	Jan	14	10:00	St. Paul	Left
1911	Jan	15	10:00	St. Paul	Arrived
1911	Jan	16	10:00	St. Paul	Left
1911	Jan	17	10:00	St. Paul	Arrived
1911	Jan	18	10:00	St. Paul	Left
1911	Jan	19	10:00	St. Paul	Arrived
1911	Jan	20	10:00	St. Paul	Left
1911	Jan	21	10:00	St. Paul	Arrived
1911	Jan	22	10:00	St. Paul	Left
1911	Jan	23	10:00	St. Paul	Arrived
1911	Jan	24	10:00	St. Paul	Left
1911	Jan	25	10:00	St. Paul	Arrived
1911	Jan	26	10:00	St. Paul	Left
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10. ESTIMATING FERTILITY

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1 former Chief John Layton or Roger O. Day, and we would
2 voluntarily dismiss those.

3 THE COURT: Layton, and who is the other one?

4 MS. PILSBURY: Day.

5 THE COURT: Well, now, she says that you didn't serve
6 Fulcher.

7 MS. PILSBURY: Apparently we didn't, so he is
8 obviously out.

9 THE COURT: Now, very quickly -- do you have
10 something you want to add?

11 MS. BONN: Yes, Your Honor. I wanted to address
12 Fulcher. He is not a Metropolitan Police Department officer,
13 and there will be testimony of that.

14 THE COURT: But he is being dismissed now because
15 he hasn't been served.

16 MS. BONN: I understand, Your Honor. I just wanted
17 to make the record clear as to who Thomas Fulcher was.

18 THE COURT: He is not a police officer?

19 MS. BONN: No, Your Honor, and there will be
20 testimony --

21 THE COURT: What was he?

22 MS. BONN: I don't know who Thomas Fulcher was, but
23 there was testimony here during the course of the case as to
24 the activities of Thomas Fulcher --

25 THE COURT: Now, just to run through that list with

former Chief Clerk of the Court, and we would
voluntarily attend to it.

THE COURT: Yes, and you in the other case.

MR. ELLIS: Yes.

THE COURT: Well, now, the way that you think we

should

MR. ELLIS: I don't think we should, so far as

officially

THE COURT: Now, very quickly -- do you have

something you want to add?

MR. ELLIS: Yes, Your Honor. I wanted to say

nothing, but I am not a professional police department officer.

and there will be testimony to that.

THE COURT: But he is being attacked now because

he hasn't been arrested.

MR. ELLIS: I understand, Your Honor. I just didn't

in fact the record says that the police officer was.

THE COURT: He is not a police officer?

MR. ELLIS: No, Your Honor, and there will be

testimony --

THE COURT: What was that?

MR. ELLIS: I don't know who the police officer was, but

there was testimony that during the course of the case he

was arrested by the police.

THE COURT: Well, just to be thorough that that was

1 defendants, having been first duly sworn, testified as
2 follows:

3 DIRECT EXAMINATION

4 By Ms. Bonn:

5 Q. Would you state your full name for the record?

6 A. Detective Edward Joseph Jagen.

7 Q. Are you a defendant in this lawsuit today?

8 A. Yes, I am.

9 Q. What is your present employment?

10 A. Metropolitan Police Department, Investigative
11 Services Division.

12 Q. Is that your present duty assignment?

13 A. Security Offices, Management Branch.

14 Q. What do you do in the Security Offices, Management
15 Branch?

16 A. Investigate complaints on private security in the
17 District, backgrounds on all private security in the District,
18 be it private detective, security guards, the police officers.

19 Q. What rank do you hold at this time?

20 A. Detective, grade two.

21 Q. When did you first become employed by the Metro-
22 politan Police Department?

23 A. May of 19- -- I have to take it back. August of
24 1969.

25 Q. What was your rank at that time when you became

defendant, having been duly sworn, testified as follows:

DIRECT EXAMINATION

Q. Now:

Q. Would you state your full name for the record?

A. Detective Edward Joseph Ryan.

Q. Are you a detective in the Iowa State?

A. Yes, I am.

Q. What is your present assignment?

A. Metropolitan Police Department, Investigative

Division.

Q. Is that your present duty assignment?

A. Security Division, District Branch.

Q. What is your duty in the Security Division, District Branch?

Answer:

A. Investigate complaints on private security in the

district, investigate on all private security in the district.

Q. In private security, security guards, the police officers.

Q. What rank do you hold at this time?

A. Detective, First Rank.

Q. When did you first become assigned to the position?

Answer: Police Department.

Q. How long have you been in the position? August 19

Q. What was your duty at that time when you began?

1. employed?

2. A. I was a police cadet.

3. Q. What were your duties as a police cadet?

4. A. To work in schools with juveniles and to write
5. parking tickets.

6. Q. Did there come a time when you entered the police
7. academy?

8. A. Yes, ma'am.

9. Q. When was that?

10. A. Approximately in December of 1969.

11. Q. When did you graduate from the Academy?

12. A. Approximately April of '70.

13. Q. What was your first assignment upon graduation from
14. the Police Academy?

15. A. To the 14th precinct or 6th district.

16. Q. What did you do in the 6th district?

17. A. Uniform patrol.

18. Q. How long did you function or were employed in
19. the uniform patrol capacity?

20. A. I stayed in uniform for approximately nine to 11
21. months, and then I moved into vice investigations where I
22. investigated narcotics, gambling, and prostitution.

23. Q. What year would that have been, Detective Jagen?

24. A. Late '70, early '71.

25. Q. Do you do any surveillance work as a Vice Squad

1 detective?

2 A. Yes, ma'am.

3 Q. Did you work undercover?

4 A. It depends on the definition of "undercover."

5 Q. I'm sorry, let me clarify that question. Did you
6 work in plain clothes?

7 A. Yes, I did, and at times people felt that I was
8 something other than a police officer, but that doesn't
9 always necessarily mean that you are undercover.

10 Q. I understand.

11 Did you receive training in investigative work when
12 you were in the Vice Squad at the 6th district?

13 A. Yes, ma'am.

14 Q. Was your function there in investigating narcotics
15 and prostitution and gambling activities?

16 A. Yes, ma'am.

17 Q. Did there come a time when you were detailed to the
18 Intelligence Division?

19 A. Yes, ma'am.

20 Q. When was that?

21 A. Late 1971, or early 1972.

22 Q. Were you assigned to a supervisor in the Intelligence
23 Division?

24 A. Yes, ma'am, I was.

25 Q. Who was that?

1 A. Sergeant Chris Scraper.

2 Q. Did you receive from Sergeant Scraper or anyone else
3 in the Intelligence Division a general description of your
4 duties, your responsibilities in the Intelligence Division?

5 A. Yes, ma'am, I did.

6 Q. What was that description?

7 A. To go out into the streets, and hopefully to infiltrate
8 large organizations that would plan mass demonstrations in the
9 District, and while investigating -- while infiltrating those
10 organizations, to try to locate a disruptive element that had
11 surfaced at those times.

12 Q. Did you receive any specific investigative assignment
13 from Sergeant Scraper?

14 A. Yes, ma'am. At the time, or shortly before that
15 time, the Capitol and, I believe, the Pentagon had been blown
16 up -- lavatories in those buildings -- and the Weathermen had
17 claimed responsibility, and I was to try to seek out the
18 individuals involved.

19 Q. What did you do to begin -- or how did you begin
20 that investigation?

21 A. Well, knowing that the politics of the Weathermen
22 was to disrupt the government, and they were against the war,
23 which the government at the time was for, I joined antiwar
24 groups.

25 Q. What was the first group that you came in contact

1 with in the course of your investigation?

2 A. An organization called People's Coalition for Peace
3 and Justice.

4 Q. Does that have any initials that it is also commonly
5 known by?

6 A. Yes, ma'am, PCPJ.

7 Q. What did you do with respect to PCPJ?

8 A. I would go to rallies, demonstrations, just be seen
9 so I would be accepted.

10 Q. What name did you go by during this period of time?

11 A. Edward Joseph Jagen.

12 Q. How would you dress? Were you in uniform?

13 A. No, ma'am. I dressed as the element dressed, in
14 jeans, beard, long hair.

15 Q. Directing your attention to PCPJ, what year was
16 it that you began attending rallies?

17 A. It was either late '71 or early '72.

18 Q. Did you attend any meetings of PCPJ?

19 A. Yes, ma'am.

20 Q. Did you work in their offices?

21 A. No, ma'am.

22 Q. What was the extent of your involvement with PCPJ?

23 A. PCPJ was a younger organization, mostly, very cliquish.
24 You had to be known for a while before they would really accept
25 you. The closest I could get to them was to leaflet for them,

1 to assist them in raising money, but generally I was not
2 accepted.

3 Q. When you say "not accepted," what does that mean?

4 A. Trusted.

5 Q. Were you permitted into all the meetings?

6 A. No, ma'am.

7 Q. Did there come a time when you became involved with
8 another organization?

9 A. Yes, ma'am, there did.

10 Q. What was that?

11 A. Organization called Washington Peace Action
12 Coalition.

13 Q. What are the initials that Washington Peace Action
14 Coalition is commonly known by?

15 A. It is called WAPAC.

16 Q. Did you know a gentleman by the name of Abe Bloom
17 in WAPAC?

18 A. Yes, ma'am.

19 Q. How did you first become involved in WAPAC,
20 Detective Jagen?

21 A. They had been harassing me quite a bit to come to work
22 for them while I was trying to get involved with PCPJ. I
23 didn't feel at the time that WAPAC was necessarily involved --
24 well, I know they weren't involved in any civil disobedience,
25 but there was a disruptive element that -- the leach type of

1 effect, that would cling onto large groups such as this as
2 people who did advocate civil disobedience. Seeing that I
3 wasn't necessarily being accepted into the PCPJ, I just went
4 ahead and did what WAPAC wanted me to do.

5 Q. What was that? What did you do with respect to
6 WAPAC?

7 A. It started out leafleting, and then they wanted me
8 to come into the office and telephone, fundraising for them,
9 and stand in front of movie theaters raising money for them,
10 more leafleting, typing, poster making, general gofer, pick
11 people up from the airport and drop them, and shuffle people
12 around town when they were having a big mass demonstration,
13 shuffle people in my own vehicle to and from different places
14 that they were sleeping, churches and things like that.

15 Q. Did you spend a lot of time in the office, Detective
16 Jagen?

17 A. Yes, ma'am, a lot of time.

18 Q. Did you ever have access to the mailing lists of
19 WAPAC?

20 A. Yes, ma'am, I did.

21 Q. Did you ever take any of the mailing lists out of
22 the offices?

23 A. No, ma'am, I did not. I might add that I was the
24 one that reported that that mailing list was missing.

25 Q. Who did you report that to?

1 A. Mr. Jerry Gordon.

2 I also reported at the same time that he should try
3 to screen some of the people that were running in and out of
4 that place because they didn't have any idea who those
5 people were, and these type of things could happen.

6 Q. Were you ever accused of taking the mailing list?

7 A. Not -- no. It came up every time this case came
8 up, but not necessarily saying that I did it, no.

9 Q. Did you have access to the mail for WAPAC?

10 A. Yes, ma'am, I did mass mailings for them.

11 Q. Did you ever take any of the mail out of the office?

12 A. No, ma'am.

13 Q. Did you have access, while you were working for
14 WAPAC, to lists of contributors?

15 A. Yes, ma'am.

16 Q. Did you make phone calls to contributors for funds?

17 A. Yes, ma'am.

18 Q. Did you ever take any of those lists out of the
19 office and bring them back to the Metropolitan Police
20 Department?

21 A. No, ma'am.

22 Q. Did you attend the meetings for WAPAC?

23 A. Yes, ma'am.

24 Q. Were they open meetings generally?

25 A. Some were, and some weren't.

1 Q. The ones that weren't, what type of meetings were
2 they?

3 A. Just general meetings. It depended what the
4 problem was that week, that day. They were quite uneventful,
5 quite boring.

6 Q. Were you ever excluded from any meetings?

7 A. No. As a matter of fact, they wanted me to come to
8 them all, but they were sidetracking me from my responsibilities
9 with the police department. I was supposed to be investigating
10 crime.

11 Q. Did you participate in the meetings? Did you generally
12 participate in the meetings?

13 A. I tried, yes.

14 Q. Did you ever advocate anything disruptive?

15 A. No, ma'am. As a matter of fact, the main reason
16 that I went ahead and joined with WAPAC was I knew that I
17 would be contacted, seeing that I was quite young and they
18 were not so young, and if there was a disruptive element out
19 there, it was coming from the youth, not necessarily the older
20 people. I knew they would contact me, seeing that I was in
21 WAPAC, and obviously high enough up that I might have some
22 usefulness to them. It did, in fact, work. I was, in fact,
23 contacted -- at the time you have to understand how this
24 worked. You had two major coalitions, but there was no set
25 individual that was with one or the other. They jumped back

1 and forth. One day they would be with WAPAC in this splinter
2 group, and the next day they would be in another group.
3 They really weren't locked in membership. You weren't
4 card carriers, okay? And the ones in PCPJ, if PCPJ was
5 running a mass demonstration, if they wanted to plan a
6 breakaway, for example -- at a certain point during the march,
7 whether to veer off -- say the police wouldn't let them go
8 straight down the street because they were going towards the
9 Justice Department -- and the police would curb them off.
10 At that point a splinter group would break away and try to
11 cause a disruption there. When I would find this out, I would
12 inform the police department, and we'd have a wall of police
13 there, and they couldn't do it.

14 The point I was trying to make was no matter what
15 group was planning a demonstration at the time, I seemed to
16 always be contacted for some sort of support because I had
17 built my cover into WAPAC since I couldn't achieve it in PCPJ.

18 But like I said, there was really no one organi-
19 zation. Everybody belonged to one another most of the time --

20 Q. Detective Jagen --

21 A. -- except for the leaders of those small splinter
22 group organizations. They seemed to stay fast. Did you get
23 that?

24 Q. Yes, okay.

25 Detective Jagen, did you ever receive information in

1 your capacity at WAPAC of a splinter group that was planning
2 to split off from a demonstration?

3 A. Many times.

4 Q. What did you do with that information?

5 A. Pass it on to the police department.

6 Q. What was the reason for that?

7 A. Because they planned civil disobedience, property
8 destruction, and confrontation with the police department.
9 Today it would be called terrorism.

10 Q. Was there any way that you could have obtained that
11 information other than being in a position in WAPAC?

12 A. No, unless I was in another organization and
13 accepted to the same extent.

14 Q. Did you consider yourself investigating Abe Bloom?

15 A. Abe Bloom? No.

16 Q. Did you consider yourself actually in the capacity
17 of investigating WAPAC itself as an organization?

18 A. WAPAC itself? No.

19 Q. How long did you work at WAPAC?

20 A. It's kind of vague, but I believe late '73 and
21 early '74.

22 Q. Did they pay you for your work there?

23 A. No, ma'am, they did not.

24 Q. What kind of hours did you work at WAPAC?

25 A. It could be anywhere from eight hours a day to 16

1 hours a day. During the planning of big demonstrations, I
2 could be up 48 hours.

3 Q. Did you work there any set number of days a week?

4 A. No, but I -- I tried to make it at least five,
5 sometimes seven.

6 Q. Did anyone ever ask you if you were a police depart-
7 ment officer?

8 A. No, ma'am, they did not.

9 Q. Did you believe at the time what you were doing was
10 a lawful activity?

11 A. Yes, of course.

12 Q. Did you ever have, or did you have daily contact with
13 the FBI?

14 A. No.

15 Q. During this period of time?

16 A. No, I did not.

17 Q. Did you ever report any information that you received
18 on WAPAC to the FBI?

19 A. No, ma'am, I did not.

20 Q. Do you have any knowledge, or did you ever
21 participate in the FBI COINTELPRO New Left program?

22 A. No, ma'am, I did not.

23 Q. During the period that you were at WAPAC, were you
24 ever in the office alone?

25 A. I don't believe I have ever been in the office alone.

1 A. Ann Kolego Markovich.

2 Q. Are you a defendant in this lawsuit?

3 A. Yes, ma'am, I am.

4 Q. Are you presently employed?

5 A. No, ma'am, I'm not.

6 Q. Were you ever employed by the Metropolitan Police
7 Department?

8 A. Yes, ma'am, I was.

9 Q. During what periods of time?

10 A. The beginning was approximately the end of March
11 of 1971 until March 1st of '80.

12 Q. Directing your attention to March of 1971, in what
13 capacity were you employed by the Metropolitan Police
14 Department?

15 A. I was a paid source.

16 Q. And what division did you work for?

17 A. The Intelligence Division.

18 Q. Did you have a supervisor or a contact person that
19 you reported to in the Intelligence Division?

20 A. Yes, ma'am, I did.

21 Q. And what was that person's name?

22 A. There were two people that I called. One of them
23 was John Mahaney. The other person was Sergeant Christopher
24 Scrapper.

25 Q. Did you basically work in the field during the

1 period of time that you came on to the Metropolitan Police
2 Department?

3 A. Yes, ma'am.

4 Q. When you came on to the Metropolitan Police
5 Department as a paid source, did they ever describe or give
6 you a general description of your duties and responsibilities
7 as a paid source?

8 A. Yes, ma'am, they did.

9 Q. Could you tell the Court what that was?

10 A. Yes. When I first began in March -- the end of
11 March of 1971, there was planning in the works for several
12 major demonstrations. A prelude to that had been the Capitol
13 bombing, which had people a little concerned about the element
14 that was operating.

15 The demonstrations that were being planned, one of
16 them was very large, very massive, completely orderly,
17 above board. There was another one later, a couple of weeks
18 after that one, where civil disobedience and that sort of
19 thing was to take place.

20 Q. What did you understand your duties and responsi-
21 bilities were with respect to those demonstrations?

22 A. Basically to make sure that at no time any disruptive
23 element was ever able to take control of something that would
24 have been a peaceful sort of thing, that our responsibility
25 basically was for the lives and property of the people in the

1 District of Columbia.

2 Q. How did you go about gathering this information,
3 Miss Markovich?

4 A. The first thing I did was walk into the offices of
5 the National Peace Action Coalition and the People's
6 Coalition for Peace and Justice.

7 Q. Does the National Peace Action Coalition have initials
8 that it generally goes by?

9 A. It would go by the name of NPAC.

10 Q. And the People's Coalition for Peace and Justice?

11 A. PCPJ.

12 Q. Where were those offices located, if you recall?

13 A. 1029 Vermont Avenue.

14 Q. What did you do when you walked in?

15 A. I volunteered to do anything they needed: stuffing
16 envelopes, that sort of thing.

17 Q. Did you, in fact, work for PCPJ or NPAC?

18 A. I was doing volunteer work at the time.

19 Q. What were your duties besides stuffing envelopes?

20 A. That sort of thing: taking leaflets from one place
21 to another place, taking things to a printer, basic sort of
22 office things. If a phone needed to be answered, I answered
23 it, that sort of thing.

24 Q. Did you have access to their mailing lists?

25 A. I suppose it was there.

1 Q. Did you ever take any mailing lists out of the
2 offices?

3 A. No, I did not.

4 Q. Did you have access to their mail?

5 A. Yes, I'm sure at some point I did.

6 Q. Did you ever take any of their mail out of the
7 office?

8 A. Never.

9 Q. Did you have access to information on contributors
10 to either PCPJ or NPAC?

11 A. At different times those things were out and around.

12 Q. Did you ever take any of those --

13 A. Never.

14 Q. -- lists of contributors out of the office?

15 A. Never.

16 Q. Did you ever come across any address books belonging
17 to PCPJ or NPAC?

18 A. There were things sitting around on people's desks,
19 there were things in that regard. Yes, I did.

20 Q. Did you ever take any -- an address book out of
21 those offices?

22 A. No.

23 Q. Were you ever given any instruction with respect to
24 provoking disruptive activity?

25 A. Definitely.

1 Q. What was that?

2 A. From the very beginning I was informed by Sergeant
3 Scrapper that the one thing that was not to be tolerated under
4 any circumstances was disrupting, that our goal was to make
5 sure that didn't happen. That was not our goal.

6 Q. Did you ever attend any meetings of PCPJ?

7 A. Yes, ma'am, I did.

8 Q. Were these generally open meetings?

9 A. Sometimes yes, sometimes no.

10 Q. Were you ever -- the ones that weren't open, what
11 type of meetings were they?

12 A. I think basically strategy planning for something
13 that was coming up, that sort of thing.

14 Q. Did you generally participate in these meetings?

15 A. Not to any great extent.

16 Q. Why was that?

17 A. Well, the other thing that I had been told one was
18 not to do was to assume any role of leadership so that things
19 that might happen would be something that we had proposed; that
20 the groups were to continue as they were; that they had a
21 peaceful plan -- they had what they had in mind -- they should
22 be allowed to carry that out. No one was there to stop them
23 from doing that.

24 Q. Did you ever report any information back from these
25 meetings that you attended to the Metropolitan Police Department?

1 Q. About a week and a half ago.

2 Do you recall reference made to a meeting being
3 held on the Antiwar Union where unmarked police cars were parked
4 out front of the building?

5 A. Yes, I do.

6 Q. Could you relate what your memory of that incident
7 was?

8 A. My memory of that incident was we were then on 18th
9 Street. There was a meeting of some sort, and I don't particu-
10 larly remember what the text of it was going on. I don't
11 recall how people became aware that there was someone down-
12 stairs, and supposedly the conversation from upstairs was being
13 transmitted, and one could hear it on the street. I don't
14 know how that came about. The only thing I remember saying
15 about it was if you don't know who it is down there listening
16 to your conversation -- if you don't know why they're doing
17 it, the most prudent course of action would be, instead of
18 becoming upset and running around, would be to go downstairs
19 and simply inquire of those people who they were and under
20 what authority they were listening.

21 Q. Do you know if they ever did that?

22 A. To my knowledge, I don't think so.

23 Q. Did you ever recommend any violent activity with
24 respect to the people that were sitting outside?

25 A. Never.

1 Q. Did you know a person by the name of Richard
2 Pollock?

3 A. Yes, I did.

4 Q. What was the nature of your relationship with
5 Richard Pollock?

6 A. Richard Pollock was in some way or another associated
7 with People's Coalition for Peace and Justice, the PCPJ.
8 I ran into him, I guess, on numerous occasions in and out of
9 the office. I never had very much contact with him. He was
10 at meetings, I was at meetings. As far as any discussions with
11 him or a close relationship, I would say it doesn't exist.

12 Q. Did you ever go to demonstrations with him?

13 A. Not to my knowledge.

14 Q. Did you ever stand at demonstrations with him that
15 you recall?

16 A. Pardon me?

17 Q. Were you ever standing at any demonstrations, do
18 you recall, next to him?

19 A. Next to him, no. I suppose it is extremely probable
20 that we were at the same demonstrations together at the same
21 time. I don't recall being with Richard Pollock.

22 Q. Did you ever have any access to tear gas cannisters
23 at any of the demonstrations?

24 A. No.

25 Q. Did you ever have any access to rocks, or throw

1 rocks at any demonstrations?

2 A. No.

3 Q. When was the last time that you had any
4 contact with Carol Collum or PCPJ during that period of time?

5 A. That would be either August or September of 1973.

6 Q. What happened, if anything, to cause you not to have
7 contact with any organizations or Carol Collum?

8 A. I had -- that was the time when I came up from
9 undercover and was getting ready to go to the Academy.

10 Q. Do you know how your cover was broken?

11 A. No. Although I might add it was broken after I
12 had already left.

13 Q. What was the activity that you can recall that you
14 performed in an undercover or source capacity?

15 A. I really don't know.

16 Q. Do you remember the date though?

17 A. I remember the date because I remember when I came
18 into the office basically. I couldn't tell you an exact day
19 or what I had done just before or any of that.

20 Q. What was the date?

21 A. The date was approximately August of '73 or September
22 of '73.

23 Q. And in August or September of '73, did there come a
24 period of time when you worked in the office?

25 A. Yes, there was.

1 Q. What office are we talking about?

2 A. The Intelligence Division.

3 Q. And what did you do in the office?

4 A. Basically office sort of things that one does.

5 There -- one part of that office's responsibility was doing
6 security checks for people applying for gun permits or for
7 special police, that sort of thing, where you just simply go
8 through the file.

9 Q. During that period of time did you become aware that
10 your cover had been blown with respect to Carol Collum?

11 A. Yes, I did.

12 Q. How was that?

13 A. One day when I was in the office the phone rang, and
14 I answered it, and it didn't seem odd at the time whoever was
15 at the other time hung up. About five minutes later the
16 phone rang again, I answered it, and the person on the other
17 end said, "I can't believe it is you, Annie," and that was
18 Carol Collum.

19 Q. What name had you gone by when you lived with Carol?

20 A. Ann Kolego.

21 Q. And what is Markovich -- your name now is Ann
22 Kolego Markovich?

23 A. Yes, I was married later.

24 Q. Did you have any subsequent contact with Carol Collum
25 after that telephone call?

1 A. I met with her either that day or during that week
2 of the time when she called me. I met with her and a woman by
3 the name of Noreen Banks.

4 Q. What was the purpose of that meeting?

5 A. Carol basically, I think, had said that she would
6 like to talk to me, and I said fine, that I would like the
7 opportunity to talk to her also.

8 Q. And subsequent to that meeting, did you have any
9 other further contact with Carol Cullum?

10 A. No.

11 Q. When did you next see Carol Cullum since 1974?

12 A. I saw her in the courtroom one day, I think it was
13 last week when she testified.

14 Q. Have you had any further contact with Richard
15 Pollock since 1974?

16 A. I saw him in the courtroom.

17 Q. How long did you work in the offices of the
18 Intelligence Division after 1974, when you were assigned --

19 A. In 1973.

20 Q. Excuse me, '73.

21 A. I was there probably not more than a month before I
22 went to the Police Academy.

23 Q. Was there a time when you were sworn as a Metropolitan
24 Police Department officer?

25 A. Yes, that was before.

1 Q. When was that?

2 A. In approximately March of 1973.

3 Q. Excuse me, you were sworn in in March, and then
4 you began working in the Intelligence Division as an officer --

5 A. No, ma'am.

6 Q. Why don't you explain it?

7 A. I stayed in my same capacity, the same role as
8 when I had been a source. It just remained the same.

9 Q. And then what date were you sworn in as a Metropol-
10 litan Police Department officer?

11 A. Some day, I believe the month was March, of 1973.

12 Q. What was your assignment after you were sworn in as
13 a Metropolitan Police Department officer?

14 A. I was assigned to the Intelligence Division.

15 Q. How long did you remain there after you were sworn
16 in as a Metropolitan Police Department officer?

17 A. Until September or October of 1973.

18 Q. What was your subsequent duty assignment?

19 A. I went to the Police Academy. When I got out of the
20 Academy, I was assigned to the Third District in uniform.
21 Subsequently I was assigned to Old Clothes Tac, and that's --

22 Q. Are you now resigned from the police department?

23 A. Yes, ma'am.

24 Q. When working in the Intelligence Division, in a
25 source capacity, did you have daily contact or any contact

1 with the FBI?

2 A. No.

3 Q. Were you involved at all in assisting the FBI in
4 any of their counterintelligence programs?

5 A. No.

6 Q. Were you involved in any surveillance activity, any
7 electronic surveillance activity, for the Metropolitan Police
8 Department?

9 A. No.

10 Q. Did you believe that what you were doing for the
11 Metropolitan Police Department was a lawful activity?

12 A. Unquestionably.

13 MS. BONN: I have no further questions.

14 - - -

15 CROSS EXAMINATION

16 By Ms. Pilsbury:

17 Q. Mrs. Markovich, what was it that you believed you
18 were doing for the Metropolitan Police Department at the time
19 that you were associating with Rich Pollock and Carol Cullum?

20 A. My understanding of what it was that I was to be
21 doing was at the time that I began, there was a great deal of
22 turmoil on college campuses and whatnot. The Capitol had
23 been bombed earlier in the month that I started. There was --
24 there had been lives lost in other parts of the country which
25 I always assumed could have not happened had people been

1 Q. You would attend demonstrations on occasion, I
2 take it?

3 A. Yes.

4 Q. When you would, would you report back to your
5 control officer the names of the people that you recognized
6 that had been at the demonstration?

7 A. Yes.

8 Q. Do you know whether or not these names were ever
9 forwarded to the FBI?

10 A. I haven't the faintest idea.

11 MS. PILSBURY: Thank you. I have no further
12 questions, Your Honor.

13 THE COURT: Recross -- I am sorry, Mr. White?

14 MR. WHITE: We have no questions.

15 MS. BONN: I have no questions.

16 THE COURT: You may step down.

17 Let's take another 10-minute recess.

18 - - -

19 Thereupon, the following proceedings were had out
20 of the presence and hearing of the jury as follows:

21 THE COURT: We will finish today?

22 MS. BONN: I predict we would finish before the
23 luncheon break.

24 THE COURT: Do you have rebuttal?

25 MS. PILSBURY: Yes, Your Honor, we do, and what I'd

1 Q. Did there come a time when you were asked or directed
2 to check the officers' photographs for two individuals?

3 A. Yes, this morning.

4 Q. Did you make such a check for a Steve or Steven,
5 under either spelling, Wilcox?

6 A. Yes, I did.

7 Q. What was the result of that check?

8 A. Negative, no photograph.

9 Q. Did you make a similar check for a Tom or Thomas
10 Fulcher?

11 A. Yes, I did.

12 Q. What was the result of that check?

13 A. No photographs.

14 Q. Are there any other records as to police officers
15 past or present maintained in the Metropolitan Police
16 Department?

17 A. Yes, there is.

18 Q. Could you state what they are?

19 A. May I take out my notes so I can refresh myself?

20 MS. PILSBURY: We have no objection.

21 THE COURT: Certainly.

22 THE WITNESS: All right, besides the files that are
23 available to me, which would be the active and the inactive
24 photographs, we also have a 3 x 5 card file which has the
25 officer's name -- if he is an active officer, right now -- that

1 we keep in our office. I checked those.

2 I went downstairs to the civilian fingerprint
3 index card section -- well, it's housed in civilian --

4 Q. (By Mr. Barclay) Could you slow down?

5 A. Um-hum, excuse me.

6 It's filed in the civilian fingerprint section,
7 and it houses not only fingerprints, but also fingerprints of
8 all officers or police applicants that have either retired or
9 resigned from the police department, and there was no record
10 of either name.

11 Q. By "either name," are you referring to Steve Wilcox
12 or Thomas Fulcher?

13 A. Yes.

14 Q. Is there such a thing as a gun record?

15 A. Yes, I ran both names --

16 THE COURT: Yes, you answered that.

17 Q. (By Mr. Barclay) What is a gun record?

18 A. What I did, I ran their full names in a computer
19 to see if they had any service revolvers issued to them, and
20 there was no listing.

21 Q. By "no listing," there was no listing as to Steven
22 Wilcox or Thomas Fulcher?

23 A. That's correct.

24 Q. Does the Metropolitan Police Department maintain a
25 payroll record?

1 A. Yes, they do.

2 Q. What is contained on that payroll record?

3 A. The date -- well, I checked the separation file,
4 and on the separation file it lists officers that have left
5 for various reasons, either retirement, resignation, termination;
6 the date they resigned, or whatever; and any information that
7 is needed for payroll. I could not find a listing for either
8 officer or person, rather.

9 Q. Does the Metropolitan Police Department maintain a
10 computer printout or computer listing of police officers?

11 A. Yes, they do.

12 Q. And you checked that printout with respect to
13 Steve Wilcox or Thomas Fulcher?

14 A. Yes, I did.

15 Q. What results did you have?

16 A. I could not find either name.

17 Q. Were you present when a check was made as to the
18 investigative services records as to former or present sources
19 or informants?

20 A. Yes.

21 Q. And in what capacity were you involved in that?

22 A. I was on the extension when the request was made
23 and the answer was given.

24 THE COURT: Can you hear back there? Okay, I
25 guess it is just me.

1 THE WITNESS: I'm sorry.

2 THE COURT: Thank you.

3 Q. (By Mr. Barclay) Pursuant to that check, was there
4 any reference to a Steven or Steve Wilcox?

5 MS. PILSBURY: Your Honor, I'm going to object. If
6 I understand what she is saying, she didn't make the search,
7 somebody told her they checked and called on the phone.

8 THE COURT: The objection is overruled.

9 Q. (By Mr. Barclay) Do you recall the question I just
10 asked?

11 A. No, would you repeat it, please?

12 Q. Pursuant to that check or request, was there any
13 reference to Steven or Steve Wilcox as a source or paid
14 informant?

15 A. Right. It was asked, and -- excuse me a minute.
16 The question was asked to Lieutenant Preston, Investigative
17 Service Division, and he did check the source file, and he
18 found neither name.

19 Q. By "neither name," are you also referring to Tom
20 or Thomas Fulcher?

21 A. Yes, I am.

22 MR. BARCLAY: I have no other questions, Your Honor.

23 THE COURT: Ladies and gentlemen, the testimony of
24 this witness about what somebody else told her was in a source
25 file is not to be taken by you as proof that the name wasn't

1 three are maintained in the files under your jurisdiction?

2 A. We maintain the confidential source file.

3 Q. Did there come a time when you were asked or
4 requested to check your files as to whether certain indivi-
5 duals were in the employ of the District of Columbia?

6 A. Yes, I did.

7 Q. Did you check your files as to Steve or Steven
8 Wilcox or any variation on that name?

9 A. Yes, I did.

10 Q. What specific files did you check?

11 A. I checked the confidential log, the cross reference
12 3 x 5 cards, and the UN form 745.

13 Q. How far back do those files go?

14 A. Back to 1968.

15 Q. In your check did you find the name Steven Wilcox
16 mentioned, or listed, or referenced as a paid employee of
17 the Metropolitan Police Department?

18 A. No, I did not. In fact, there was no name even
19 close to that.

20 Q. Was there even a Wilcox?

21 A. No, there was not.

22 Q. Did you make a check with regard to Tom or Thomas
23 Fulcher?

24 A. Yes, I did.

25 Q. What steps did you take to check that?

1 A. I checked the same procedure: the log, the 3 x 5
2 reference cards -- cross reference cards -- and the
3 UN form 745.

4 Q. Did you find any reference in your files to Tom or
5 Thomas Fulcher or any variation of that name?

6 A. No, I did not, no names close to that.

7 MR. BARCLAY: The Court's indulgence for a moment,
8 Your Honor.

9 Q. (By Mr. Barclay) Sir, if a special employee or
10 confidential source went by two first names, how would he be
11 listed or carried in your files?

12 A. There is no written procedure for that. It may be
13 carried in the -- kind of the determination of the officer
14 who gives the name. He may use the first name aka, alias,
15 Joe, that may or may not be a nickname filed.

16 Q. In any event would he be listed under a last name?

17 A. He would have a last name and probably the primary
18 first name that he goes by.

19 Q. Sir, if a confidential source or a special employee
20 were required as part of his duty or assignment to make a
21 trip to the West Coast, would his name be carried in your
22 files?

23 A. More than likely he would.

24 Q. Why would that be?

25 A. If he was making a trip of that nature, the funds

1 to fund that trip would have to be recorded in order to get
2 the finance to send him on a trip like that.

3 MR. BARCLAY: Thank you. I have nothing further,
4 Your Honor.

5 THE COURT: Cross examination?

6 MR. SCHEMBER: Thank you, Your Honor.

7 - - -

8 CROSS EXAMINATION

9 By Mr. Schember:

10 Q. Lieutenant Preston, my name is Dan Schember. I
11 am one of the attorneys for the plaintiffs in this case.

12 You mentioned that you checked three sources:
13 a log, a cross reference, and a UN 745?

14 A. Yes, I did.

15 Q. Now, those -- that all concerns confidential sources?

16 A. Yes, it does.

17 Q. Does it have any information other than information
18 about confidential sources?

19 A. It has the confidential source's name, a control
20 number, and the control officer.

21 Q. Now, you mentioned a confidential source was a
22 person who provided information to the police department, and
23 whose name was kept confidential for reasons to protect the
24 source; is that correct?

25 A. That's one of the reasons, the main reason.

1 Q. Protect the source from what?

2 A. From his name getting out and having any repercussions
3 for giving us the information.

4 Q. Now, are all the sources of the Metropolitan
5 Police Department confidential sources?

6 A. No, they are not.

7 Q. Those who are not -- do not perceive a need to have
8 their names protected are not recorded in the confidential
9 source log?

10 A. As far as a need to keep their names protected,
11 they may or may not, depending on what type of information that
12 they are giving. They're not all logged in a confidential
13 source file.

14 Q. And you also testified that a special employee may
15 or may not be a confidential source?

16 A. They are in a sense synonymous, and they may or may
17 not be a confidential source.

18 Q. And a special employee is a person who provides
19 information to the police department as an informant?

20 A. Yes, he is an employee, in a sense, of the police
21 department, in the sense that he is getting funds.

22 Q. So a special employee who did not feel the need to
23 have the protection of that log would not be listed in that
24 log; is that correct?

25 A. It's not always left up to the employees. It is

1 was the Intelligence Division of the Metropolitan Police
2 Department.

3 Q. Was that in 1968?

4 A. It was.

5 Q. Did you have any supervisors that you were assigned
6 to at that period of time?

7 A. Yes.

8 Q. Who were they?

9 A. Sergeant Acree and Detective Vaughn.

10 Q. When you came to the Intelligence Division, what
11 were you classified as rank-wise?

12 A. Officer.

13 Q. Did there come a time when you came to the Intelligence
14 Division when your general duties and responsibilities -- you
15 were informed of your general duties and responsibilities?

16 A. Yes.

17 Q. What were they?

18 A. They were to assimilate information regarding
19 demonstrations that might interfere with traffic and the normal
20 operational activities of citizens going back and forth to
21 work areas.

22 Q. How did you go about doing or carrying out these
23 responsibilities?

24 A. Well, at the time there were various groups that
25 were involved in civil -- in marches, civil disobedience, and

1 basically what I did was to attend meetings, conferences,
2 and other gatherings to assimilate this information so that I
3 might be able to get this information to the proper source
4 so that they in turn would be able to facilitate the necessary
5 movement to prevent some kind of disruptions.

6 Q. Did you attend any meetings of any organizations?

7 A. I did.

8 Q. What organizations, if you recall?

9 A. Black United Front, Emergency Committee for the
10 Transportation Crisis, and SCLC, Southern Conference -- I
11 don't know exactly what those letters stand for, but it was
12 SCLC.

13 Q. Southern Christian Leadership Conference?

14 A. Yes, thank you.

15 Q. What were you advised, if anything, to do or report
16 back from these meetings that you attended?

17 A. I was told to get information pertaining to -- if
18 there were going to be demonstrations, where the demonstration
19 would be held, when, what kind of demonstration, and if there
20 would be -- if there was expected to be some type of demon-
21 strations to disrupt the normal activity of the city, and that
22 is including protest marches within the streets to stop traffic
23 or any type of violence.

24 Q. How did you pass this information on back to the
25 police department?

1 A. At various times I met with my supervisor and passed
2 it through notes. Sometimes -- the majority of the time was
3 telephonically.

4 Q. Did you attend meetings of the ECTC, or the
5 Emergency Committee on the Transportation Crisis?

6 A. I did.

7 Q. During what time period?

8 A. Summer of '68.

9 Q. What type of meetings were these generally, if you
10 can recall?

11 A. Generally public meetings.

12 Q. What name did you go by in these meetings?

13 A. My given name, Harold Bynum.

14 Q. Did you participate in these meetings?

15 A. Yes.

16 Q. To what extent?

17 A. I was there, and I was a follower. I wasn't an
18 active member. I went there with an individual who belonged
19 to the Committee by the name of Reginald Booker, as a friend
20 of his.

21 Q. Did you ever make any suggestions of disruptive
22 activity?

23 A. Never.

24 Q. When was the first time that you can recall that you
25 came in contact with Reginald Booker?

1 A. During the -- during March and April of 1968.

2 Q. Did you meet him through attending ECTC meetings?

3 A. No, it was one of the other meetings that I attended.

4 I don't know exactly what meeting it was. But Reginald
5 Booker was attending various meetings of groups at the time,
6 and I happened to meet him at one of those meetings.

7 Q. What was the nature of your relationship with
8 Reginald Booker?

9 A. At the time he was interested in basically the same
10 things I was interested in, these civil groups, gathering
11 information, probably not for the same reason. But we had a
12 comradeship. I had a car. He did not have a car. He was
13 more involved into where things were going on than I was.
14 Subsequently we became friends.

15 Q. Did you ever go to Toledo with Reginald Booker?

16 A. Yes.

17 Q. How did you get to Toledo?

18 A. By auto.

19 Q. Do you know how Mr. Booker got there?

20 A. Yes, he flew by plane.

21 Q. Did you stay in the same place where he stayed?

22 A. I did.

23 Q. Do you recall where that was generally?

24 A. Yes -- only that it was in the city of Toledo.

25 Q. Did you know the person whose house you stayed?

1 A. I don't know him by name. I forgot.

2 Q. Well, was he a friend of yours?

3 A. No, he was a friend of Booker's.

4 Q. Did there come a time during your stay when you
5 became aware that the local police had called that house?

6 A. No, I did not.

7 Q. Did there come a time during your stay when Mr.
8 Booker had to leave the house?

9 A. No -- I don't understand the question.

10 Q. Excuse me, I'll rephrase it.

11 Did Mr. Booker stay in the house with you and his'
12 friend?

13 A. Yes. --

14 Q. At any time during your stay, did Mr. Booker move
15 out of the house?

16 A. No, he did not.

17 Q. Did you leave Toledo with Mr. Booker?

18 A. Yes.

19 Q. How did you both get back to Washington?

20 A. We drove back by auto.

21 Q. During the 1968 year, did you attend meetings of
22 the Black United Front?

23 A. Yes.

24 Q. What type of meetings did you generally attend?

25 A. Public meetings. Most of those occurred at churches.

1 Q. What type of information were you trying to get
2 from the Black United Front?

3 A. If they were going to hold demonstrations,
4 where those demonstrations would be held, type of demonstration,
5 basically that.

6 Q. Were you specifically conducting an investigation of
7 the Black United Front?

8 A. I was not. I was investigating incidents -- any
9 incidents by any groups that would interfere with the normal --
10 with government and the people within the city.

11 Q. Did you consider yourself specifically investigating
12 the ECTC, or the Emergency Committee on the Transportation
13 Crisis?

14 A. I did not.

15 Q. Did you consider yourself conducting a personal
16 investigation of Reginald Booker?

17 A. I did not.

18 Q. Did you know someone by the name, or meet someone
19 by the name, during that period of time, of Sammie Abbott?

20 A. Yes.

21 Q. How did you know him?

22 A. I knew him through Reginald Booker. Reginald
23 Booker was vice president for the Emergency Committee on the
24 Transportation Crisis.

25 Q. Was Mr. Abbott a member of the Emergency Committee

1 on the Transportation Crisis?

2 A. Yes.

3 Q. Did he also attend meetings?

4 A. Yes.

5 Q. Do you recall a time having dinner at Mr. Abbott's
6 house?

7 A. Yes.

8 Q. Do you recall that evening?

9 A. Yes.

10 Q. Was that a meeting at dinner, or could you explain
11 to the Court and the jury what occurred during that dinner?

12 A. Yes, it was a meeting held over dinner in which
13 various things were discussed as what -- just making plans
14 that they would just discuss over dinner. I don't know
15 specifically what was discussed at that time.

16 Q. How did you get invited to dinner at Mr. Abbott's
17 house?

18 A. Reginald Booker had mentioned to me that he was going --
19 he did not have transportation. I went with him.

20 Q. Did you participate in this meeting?

21 A. To what extent?

22 Q. My question to you would be what was the extent
23 of your participation?

24 A. I was a follower. I listened basically. I had
25 nothing to offer as far as what the Committee was doing

1 because it was a meeting of Mr. Abbott and Reginald Booker.

2 I had nothing to offer.

3 Q. Did you make any disruptive or -- disruptive
4 remarks or suggestions with respect to the activities of
5 the ECTC at this dinner?

6 A. I don't recall ever doing so.

7 Q. Did you ever report any of the information that you
8 gathered on ECTC or the Black United Front to the FBI?

9 A. No, I have not.

10 Q. Were you familiar, or did you ever assist the FBI
11 in carrying out their counterintelligence program?

12 A. No.

13 Q. Did you have any actual knowledge of what the FBI
14 was involved in during that period of time?

15 A. I had no knowledge.

16 Q. Did you believe the activities that you were doing
17 with respect to the Emergency Committee on the Transportation
18 Crisis and the Black United Front were lawful at that time?

19 A. Yes.

20 Q. How long did you remain in the Intelligence
21 Division?

22 A. From February of '68 to November of that same year.

23 Q. So you were only in less than a year in the
24 Intelligence Division?

25 A. Yes.

1 Q. What was your reason for leaving?

2 A. Well, I became dis -- disenchanted with the job
3 basically.

4 Q. Did there come a time that you recall that you saw
5 Reginald Booker again after you left the Intelligence
6 Division?

7 A. Yes.

8 Q. Were you in uniform at this time?

9 A. Yes.

10 Q. Could you relate the circumstances?

11 A. I don't recall exactly when -- I think it was on
12 the street in which I saw him, and as I approached him, we
13 just talked casually. I remember distinctly him mentioning
14 something to the effect that, well, we need more officers --
15 we need more brothers like you, and with your attitude towards
16 the black community, and as a police officer.

17 Q. Do you recall the date of that meeting?

18 A. I don't recall that.

19 Q. Do you even recall the year?

20 A. It had to be within two to three years after '68.

21 MS. BONN: I have no further questions.

22 THE COURT: Cross examination?

23 - - -

24 CROSS EXAMINATION

25 By Ms. Pilsbury:

1 Q. Mr. Bynum, you indicated that you were in the
2 Marine Corps before you went to work for the police department.

3 A. Yes.

4 Q. Had you done any sort of intelligence work in the
5 Marine Corps?

6 A. I had not.

7 Q. Did you receive any training in intelligence work
8 before you went to work for the police department?

9 A. No.

10 Q. Now, I believe you said in your testimony to Mrs.
11 Bonn that your job was to gather information on planned
12 demonstrations that might interfere with the traffic or disrupt
13 the daily activities of citizens in the District of Columbia.
14 When you went to work for -- I'm sorry, when you joined the
15 ECTC in 1968, had ECTC planned any such activities?

16 A. It had not, no.

17 Q. Would you like some water?

18 A. Yes.

19 Q. Go ahead.

20 Did you report back during 1968 on the various
21 activities the ECTC was engaged in?

22 A. Yes.

23 Q. What kind of things was ECTC doing in 1968?

24 A. I don't recall exactly what they were doing, but
25 I can say that I don't recall them at any time in the process

1 of making demonstrations that would be detrimental or be
2 disruptive.

3 Q. Do you recall what ECTC was interested in, what the
4 organization was all about?

5 A. I don't.

6 Q. Did it have something to do with the freeways?

7 A. I think -- I am not that familiar with it. I
8 can't --

9 Q. Did you -- were you at all aware of investigations
10 going on at the time you were in Intelligence of antiwar
11 groups?

12 A. No.

13 Q. Do you know whether or not ECTC was an antiwar
14 group?

15 A. No, I don't.

16 Q. Do you have any idea why you were reporting on ECTC?

17 A. Yes. I was not specifically reporting on -- what
18 is it? Repeat it again.

19 Q. ECTC.

20 A. Yes. I was not reporting on them specifically. I
21 was involved in gathering information from various groups.
22 My job was basically to move around within these various
23 groups and the gathering of this information. It wasn't
24 specifically that specific group.

25 Q. But you did report on ECTC activities among the

1 other groups that you reported on?

2 A. Yes.

3 Q. Had you been told by your supervisors to report
4 specifically on Reginald Booker?

5 A. No, I had not.

6 Q. Why did you volunteer to drive him around?

7 A. Well, basically because we were interested -- we had
8 comradeship, and he was interested in going to various groups
9 and listening in on what they had to say about various
10 issues, and I was also interested in going. The reason for
11 going was different, but we were still interested in the same
12 thing, I guess.

13 Q. Why couldn't you just have gone to these meetings
14 on your own?

15 A. Well, I didn't know the city that well. I just
16 came up in '68.

17 Q. Were you driving Mr. Booker around, or was he driving
18 you around?

19 A. No, I had the automobile. So he enlisted me
20 several times to take him here and take him there.

21 Q. Do you recall an occasion where you met Mr. Booker
22 at a picket line or something of that sort in front of then
23 Mayor Walter Washington's house and told him that you liked
24 his style and you wanted to work with him?

25 A. I don't recall that.

1 Q. Your recollection is the first time that you met
2 him was at another meeting?

3 A. I can't -- I don't recall that specific instance.
4 Neither can I pinpoint the exact time where I met him.

5 Q. Did his name mean anything to you prior to the time
6 that you had met him? Had you ever heard of him before?

7 A. No, I had not.

8 Q. How did you happen to seize upon him to be the
9 person to go around to all these meetings with?

10 A. I thought I answered that. Basically because I had
11 met him, and we were talking, and I found out that he was
12 interested in the same thing I was interested in. I had trans-
13 portation, but I did not know the city.

14 Q. And you can't recall when you met him?

15 A. No, I can't.

16 Q. Could it have been at an SCLC meeting? Does that
17 refresh your memory?

18 A. It could have been.

19 Q. That was another group you were covering at that
20 time?

21 A. Yes.

22 Q. Was Mr. Booker active at the SCLC?

23 A. Somewhat. I don't know to what extent.

24 Q. Now, you were a regular attendee at ECTC meetings
25 from the summer of 1968 on, were you not?

1 A. Yes.

2 Q. How often would they meet?

3 A. I don't know.

4 Q. Weekly?

5 A. I don't think it was weekly. If they met weekly,
6 I did not attend weekly meetings.

7 Q. Can you recall what type of activities ECTC was
8 involved with at the time you were going to their meetings?

9 A. No, I can't.

10 Q. Do you remember if they testified before the City
11 Council?

12 A. No, I did not attend their meeting at the City
13 Council.

14 Q. Do you remember any of the other people who were
15 active in ECTC during this time?

16 A. I don't remember them by name. I just remember
17 Reginald Booker.

18 Q. Do you remember if Marion Barry was active in ECTC?

19 A. I have never seen him at a meeting.

20 Q. Do you know who was vice president of ECTC during
21 the time you were reporting on them?

22 A. I don't know.

23 Q. Is it your testimony that no one in the Intelligence
24 Division, none of your supervisors, directed you to cover Mr.
25 Booker's activities?

1 A. Yes.

2 Q. That you just picked him because it was convenient?

3 A. Yes.

4 Q. For someone to go around with?

5 A. Yes.

6 Q. You did, nevertheless, report back on his activities?

7 A. Yes, in conjunction with the Committee itself -- in
8 conjunction with the Committee itself.

9 Q. Now, when you went to Toledo with him, was your
10 trip paid by the Metropolitan Police Department?

11 A. Yes.

12 Q. Did they know ahead of time you were going to
13 Toledo?

14 A. They did.

15 Q. Did they indicate that that wasn't necessary, that
16 they weren't interested in Mr. Booker, you shouldn't bother to
17 go?

18 A. No, they did not.

19 Q. Was there anybody, any group, there, any D.C.
20 group in Toledo, or was it just Mr. Booker?

21 A. Mr. Booker.

22 Q. And had you -- I may have asked this -- had you
23 informed your supervisors before you went that you were
24 going to Toledo?

25 A. Yes.

1 Q. Did you ever travel out of town anywhere else with
2 Mr. Booker?

3 A. No, I did not.

4 Q. You indicated that you were also reporting on the
5 Black United Front. Is this at the same time, 1968?

6 A. Yes.

7 Q. How long had you continued to report on the Front?

8 A. At various intervals, at any time I received word
9 of a public meeting.

10 Q. I believe you indicated that at some point in 1969
11 you became a uniformed officer; is that correct?

12 A. Yes, it is.

13 Q. After that point did you continue to do any
14 intelligence gathering?

15 A. I did not.

16 Q. So if you reported on the Front, it would have been
17 in that same period, summer of 1968 until early 1969?

18 A. No, no, not '69.

19 Q. Not '69 at all?

20 A. No, it was from February to November of '68.

21 Q. Okay, and during this period, 1968 then, did you
22 ever attend any steering committees of the Black United Front?

23 A. No, I did not. The only reason I attended was
24 public meetings.

25 Q. Did you make reports on who was at those meetings

1 and what had been discussed?

2 A. Yes, and how many people were there.

3 Q. During that time was the Black United Front
4 planning any major demonstrations or other activities that
5 might disrupt the District government or the people in the
6 city?

7 A. I was not able to detect it.

8 Q. Were you aware of whether there were any informants
9 from the FBI in either of these groups that you were reporting
10 on?

11 A. No. I was not aware.

12 Q. Do you know whether or not the reports that you
13 turned in on these groups were ever forwarded to the FBI?

14 A. I have no idea.

15 Q. You never forwarded it?

16 A. No.

17 Q. Now, you have indicated, I believe, that you had
18 dinner at Mr. Abbott's house on one occasion at which some
19 business was discussed involving ECTC. You had occasion to be
20 in his house on other occasions as well, did you not?

21 A. No, that was the only time that I was there.

22 Q. At that point is it not true Mrs. Abbott gave you,
23 I believe, some old venetian blinds that she had?

24 A. I don't recall that. There is a probability that
25 she did.

1 Court posed to counsel earlier this morning with respect to
2 the several named defendants, and would ask if we could
3 resolve that matter.

4 THE COURT: Before I get to that, just to keep the
5 record straight, the Federal defendants' motion for directed
6 verdict and the District of Columbia motion for directed
7 verdict are denied.

8 Now, what about these unnamed defendants?

9 MS. PILSBURY: Okay, Your Honor. These are all
10 named defendants. The plaintiffs will voluntarily dismiss at
11 this point John Layton, Carl Shoffler, and Dorie Binsted.

12 THE COURT: Just one Binsted?

13 MS. PILSBURY: Yes. It is our position, Your Honor,
14 that on the other defendants, the documents in evidence and/or
15 the testimony of witnesses has established that they all were
16 either in the Intelligence Division at the time in issue, or
17 they were involved in the destruction of the files.

18 THE COURT: Who was the person besides Layton and
19 Binsted that you dismissed?

20 MS. PILSBURY: Shoffler.

21 THE COURT: What about Fulcher, who says that he
22 wasn't served?

23 MS. PILSBURY: Oh, that's right. Fulcher is already
24 out because we haven't served him. So we will voluntarily
25 dismiss him.

1 THE COURT: That is treated as a motion to dismiss
2 as to those plaintiffs, and it is granted.

3 MS. PILSBURY: Thank you.

4 MS. BONN: Your Honor, I believe there was also
5 Mr. Day.

6 MS. PILSBURY: I'm sorry, yes. Mr. Day, we
7 indicated this morning that we would voluntarily dismiss Mr.
8 Day.

9 THE COURT: Is it Day or O'Day?

10 MS. BONN: Day, Your Honor.

11 MS. PILSBURY: It's Roger --

12 THE COURT: Roger Day.

13 MS. PILSBURY: Middle initial "O."

14 THE COURT: Day, okay.

15 The motion is also granted.

16 MS. PILSBURY: Thank you.

17 THE COURT: Did you want to argue this further?

18 MS. BONN: Yes, Your Honor. I feel somewhat
19 compelled to argue with respect to the numerous people I
20 listed who nothing was said -- certainly plaintiffs did not
21 make a prima facie case with respect to Mr. Ferguson, Mr.
22 Zink, Miss Gildon, Mr. Binsted. These names were never
23 mentioned as doing anything actionable at all with respect to
24 plaintiffs' testimony. I'm not sure if I covered all of them.
25 It would be the same --

(3)

(4)

1 THE COURT: I am into a second notebook here, and
2 my list -- I've got it now.

3 MS. BONN: I could find mine, also, Your Honor.

4 THE COURT: I have it.

5 Gildon, what was Gildon?

6 MS. BONN: Gildon was an officer in the Intelligence
7 Division.

8 THE COURT: And did what, according to the evidence?

9 MS. BONN: She was involved in -- this is proffer
10 not for admission of any facts, but simply to inform the
11 Court -- she was involved in infiltration and attending
12 meetings of various groups, the groups, in fact, which she
13 attended meetings, some of which are plaintiffs: Women
14 Strike For Peace was one of them.

15 There was nothing said at all with respect to
16 Metropolitan Police Department involvement in any of the Women
17 Strike Force_for Peace activities. As a matter of fact, there
18 is virtually nothing said about the Metropolitan Police
19 Department at all, and certainly Miss Gildon's activities
20 were never mentioned, and I know of no documentation other
21 than the fact that she was in the Intelligence Division as
22 an employee.

23 THE COURT: And was an informant.

24 MS. BONN: She wasn't an informant, she was an
25 undercover officer.

1 THE COURT: Does the record show that she was?

2 MS. BONN: No, Your Honor, the record doesn't show.
3 The only record of that would be my counter-response to
4 plaintiffs' --

5 THE COURT: There is nothing in the record?

6 MS. BONN: No, Your Honor, there is nothing in the
7 record.

8 THE COURT: What about Zink?

9 MS. BONN: Mr. Zink was the person in 1974 that was
10 in charge of -- in a position in the Intelligence Division
11 that carried out the decision to begin the shredding of the
12 files.

13 THE COURT: The District of Columbia can be
14 responsible for that, and he can be responsible from the
15 point of view of the statute of limitations defense without
16 being a defendant.

17 MS. BONN: That is correct, Your Honor.

18 THE COURT: Ferguson?

19 MS. BONN: Mr. Ferguson was an inspector that
20 succeeded Mr. Herlihy as the highest ranking individual in
21 the Intelligence Division.

22 THE COURT: At what time?

23 MS. BONN: I believe that it was -- I will really
24 need to check my records.

25 THE COURT: Was it after the period of the activity --

1 MS. BONN: It would be fringe 1974.

2 THE COURT: Okay. Zanders?

3 MS. BONN: Assistant Chief Zanders was an
4 assistant chief with the Metropolitan Police Department.

5 THE COURT: At what stage?

6 MS. BONN: During the period of time, 1974, when
7 the decision was made to, in fact, shred some of the old
8 files as a housekeeping matter.

9 THE COURT: Shoffler?

10 MS. BONN: Shoffler? I believe the plaintiffs have
11 voluntarily dismissed him.

12 THE COURT: What about the surviving Binsted?

13 MS. BONN: Mr. Binsted functioned as an undercover
14 police officer. None of his activities are, in fact, on
15 the record at this point. The only mention of his name I
16 believe was by Mr. Abbott as a conversation that he had
17 with Mr. Binsted. However, no further mention of Mr. Binsted
18 or any acts, tortious acts, are, in fact, on the record at
19 this time.

20 THE COURT: All right. The motion is granted with
21 respect to Zink and Zanders with the understanding that they
22 are nevertheless -- their activity in destroying the files is
23 nevertheless attributable to the surviving defendants for
24 the purposes of the statute of limitations.

25 MS. BONN: And as to the others?

1 THE COURT: Pardon?

2 MS. BONN: I was just -- I understand.

3 THE COURT: The plaintiffs dismissed as to Ferguson,
4 Zanders, and Binsted.

5 MS. BONN: I'm sorry, I didn't understand --

6 THE COURT: Ferguson, Zanders and Binsted the
7 plaintiffs dismissed, again with the understanding that if
8 the jury finds that there was a conspiracy, and that these
9 people -- acts of these people were in aid of the
10 conspiracy, the surviving defendants whom the jury finds to
11 be co-conspirators, if the jury so finds, the surviving
12 co-conspirators are responsible for the acts of these people
13 who I just dismissed.

14 Is there anything else?

15 MS. PILSBURY: Just for the record, Your Honor, I
16 want to clarify -- I don't think the plaintiffs voluntarily
17 dismissed Zanders.

18 THE COURT: I didn't say you did. I dismissed
19 them. These are dismissed by order of the Court with
20 prejudice.

21 MS. BONN: Your Honor, the Court did not mention
22 Gildon.

23 THE COURT: Gildon is also dismissed on the same
24 theory, with the understanding that the surviving defendants
25 are responsible for any information that was generated by

1 them, or any other of those things, if the jury finds there
2 is a conspiracy.

3 MS. BONN: And that was with prejudice?

4 THE COURT: With prejudice against the defendants,
5 but with that legal difference. If somebody is found
6 liable jointly and severally, these people don't have to share
7 in the judgment.

8 Mr. White?

9 MS. WHITE: There was something I wanted to address,
10 Your Honor.

11 THE COURT: We've closed this subject.

12 MS. PILSBURY: Your Honor, if I might? Given the
13 people you have dismissed, I think equity requires that Jim
14 Binsted be dismissed as well, and we would voluntarily
15 dismiss him.

16 THE COURT: Very well.

17 Mr. White?

18 MR. WHITE: Your Honor, with regard to the matter
19 of the additional memoranda which you have requested, and
20 the jury instructions, I simply request that we be permitted
21 to file any such matters by noon Monday. I will have
22 difficulty in having this prepared.

23 THE COURT: All right. Make these simultaneous,
24 and then you can file responses by 6:00 o'clock. We're going
25 to be moving awfully fast on this next week, and you're going

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,

:

Plaintiffs,

:

v.

:

CA No. 76-1326

JERRY WILSON, et al.,

:

Defendants.

:

Volume IV

Washington, D.C.

Monday, December 14, 1981

The above-entitled matter came on for trial
before the HONORABLE LOUIS OBERDORFER, United States District
Court Judge, in Courtroom No. 3.

APPEARANCES:

ON BEHALF OF THE PLAINTIFFS:

Mr. Daniel M. Schember, Esq.

Ms. J.E. McNeil, Esq.

Ms. Anne Pilsbury, Esq.

ON BEHALF OF THE FEDERAL DEFENDANTS:

Mr. David White, Esq.

Mr. Dennis F. Hoffman, Esq.

ON BEHALF OF THE DISTRICT OF COLUMBIA DEFENDANTS:

Ms. Laura Bonn, Esq.

Mr. George Barclay, Esq.

Official Reporter: Bruce W. Herzfeld

1 THE COURT: Why don't you stand over there by the
2 Marshal for just a moment.

3 Does either party have any motion?

4 MR. WHITE: I don't believe I have a motion, Your
5 Honor.

6 MS. BONN: I don't believe I do either.

7 THE COURT: You may resume your seat -- would you
8 come back, please?

9 You will be sure not to discuss what you saw with
10 the other jurors even when you are in deliberations, if you
11 happen to be in deliberations.

12 MR. MORTON: Yes, right, Your Honor.

13 THE COURT: Stand right here.

14 - - -

15 Thereupon, the following proceedings were had in
16 open court:

17 THE COURT: Ladies and gentlemen, did any of you see
18 anything in the paper or hear anything on television, or radio
19 that brought your attention to the case?

20 If you did, please raise your hand.

21 Why don't you come up here a minute.

22 - - -

23 Thereupon, the following proceedings were had at
24 the bench:

25 THE COURT: You are under oath.

1 MR. PALLARD: Yes, I did. I saw the paper article,
2 too.

3 THE COURT: I beg your pardon?

4 MR. PALLARD: I saw the article in the paper.

5 THE COURT: You did see it?

6 MR. PALLARD: Yes.

7 THE COURT: Okay. But what?

8 MR. PALLARD: It is blank now.

9 THE COURT: Why didn't you hold your hand up when
10 I asked you?

11 MR. PALLARD: I don't know.

12 THE COURT: You are excused. You may return to the
13 jury lounge.

14 MR. PALLARD: Okay.

15 - - -

16 Thereupon, the following proceedings were had in
17 open court:

18 THE COURT: Did anybody see anything in the paper
19 that reminded them or suggested anything to them about the
20 case, or see anything on the radio or television?

21 Don't kid about it because this is important. Okay.

22 Reseat alternate number 5.

23 THE CLERK: Would alternate number 5 please take
24 alternate number 4.

25 - - -

1 allegation that a white police officer had shot a young
2 teenager. As I recall, it was on a bicycle theft, or some-
3 thing minor, and had killed the young person. That caused
4 quite a bit of concern in the community. As I recall, one
5 or two members of the Front might have made some statements
6 about justifiable homicide in the context of the rhetoric of
7 the day.

8 Q. Do you recall whether or not you had any contact
9 with another organization at about the same time called the
10 Emergency Committee on the Transportation Crisis?

11 A. Yes, I did.

12 Q. What was your association with that organization?

13 A. Again, I was part of the leadership of the
14 organization. I don't recall my exact title because in those
15 periods you just work hard, and we were working very hard to
16 stop unwanted, unnecessary, and unneeded freeways in the
17 District of Columbia.

18 Q. Did the Emergency Committee on the Transportation
19 Crisis ever advocate or condone violence in any way?

20 A. No, it didn't.

21 MS. PILSBURY: Thank you very much. I have no
22 further questions, Your Honor.

23 THE COURT: You may cross.

24 - - -

25 CROSS EXAMINATION

A. Well, my best recollection is that was an investigation of the matter, and the police department had indicated that the killing was justifiable homicide.

Q. So the term didn't arise with the Black United Front?

A. No, it did not.

MS. PILSBURY: Thank you. Nothing further, Your Honor.

THE COURT: Thank you, Mr. Mayor.

THE WITNESS: Thank you, Your Honor.

THE COURT: Next witness?

MS. PILSBURY: Our next witness will be the Reverend Douglas Moore.

— — —

DOUGLAS MOORE

called as a witness on rebuttal, being first duly sworn,
testified as follows:

DIRECT EXAMINATION

By Ms. Pilsbury:

Q. Reverend Moore, would you please state your full name and current address, please?

A. John Douglas Moore, 1300 Newton Street, N.E.,
Washington, D.C. 20017.

Q. For how long have you lived in Washington, D.C.?

A. Since 1965.

1 Q. Now, directing your attention to the period 1965
2 up to approximately 1970, were you active during this time in
3 an organization called the Black United Front?

4 A. Yes, I was.

5 Q. Were you a member of its steering committee at
6 that time, if you recall?

7 A. I was a member of the steering committee in 196- --
8 December of '68. I was not a member of the steering committee
9 prior to that time. I was not a member of the original
10 founding steering of the Black United Front.

11 Q. Reverend Moore, I have placed before you a document
12 marked as Plaintiffs' Exhibit Number 17, which is in evidence
13 in this case, which is a letter to Mr. Bloom, which appears
14 to be from you. Would you take a minute and look at this
15 document? Tell the jury and the Court if you wrote this
16 document.

17 A. No, I did not write this letter. It is not my
18 literary style.

19 Q. When did you see this letter? Have you seen this
20 letter before now?

21 A. I saw this letter two weeks ago for the first
22 time. In fact, it was not in my FBI file, which was kind of
23 interesting.

24 Q. Are you familiar with the general subject of this
25 letter?

1 A. Yes, I am.

2 Q. What is the subject of the letter?

3 A. The subject of the letter is that there was
4 proposed by the Black United Front a taxing on all the
5 groups that come to the city because we found out that peace
6 groups, radical groups, all kinds of groups came to the city
7 and caused some difficulty for the citizens, and we thought
8 we ought to figure out a way to be creative to seek funds for
9 it.

10 Q. Had you made such a suggestion yourself at one time?

11 A. Yes, at a Front meeting, but later on we had a
12 meeting with some people where we discussed that.

13 Q. Now, when you made this suggestion, do you recall
14 whether or not you specifically demanded the sum of \$25,000?

15 A. No.

16 Q. Did you demand that payment be made within 10 days
17 of the receipt of this letter?

18 A. No.

19 Q. Did you request, when you made the suggestion
20 initially, that this money be paid solely by peace groups?

21 A. No.

22 Q. Do you recall how many meetings you attended at
23 which this idea was discussed?

24 A. There may have been two outside of the monthly
25 meeting of the Black United Front. There is one meeting I

1 remember very precisely. It was held at the Pitts Motor
2 Hotel, and there were members of the Black United Front
3 steering committee who attended the meeting along with me,
4 and there were several white people none of whom I remember
5 precisely.

6 This was the time when we discussed the possibility
7 of their paying a tax to come to D.C.

8 Q. Did you ever receive any type of written response
9 to this idea?

10 A. No, I never received a written response to this
11 idea, but I did receive a very inflammatory leaflet on yellow
12 mimeograph paper with a monkey and a banana on it.

13 Q. Did it appear to be -- did it appear from the context
14 of that leaflet to have something to do with your proposal?

15 A. Yes.

16 Q. I am going to show you a document marked for
17 identification as Plaintiffs' Exhibit Number 23 in evidence.
18 Would you look at the attachment to that document, Reverend
19 Moore, and tell us whether or not that was the leaflet that
20 you were referring to?

21 A. What was your question again?

22 Q. Would you look at the attachment there, the second
23 page, and tell us whether or not that was the leaflet you
24 were referring to?

25 A. Yes, I remember it very, very well. This is the

1 leaflet. It was on yellow paper, the copies that we got.

2 Q. Approximately when did you receive the leaflet --

3 A. I don't remember --

4 Q. -- in time, compared to when you first started
5 discussing this idea, do you recall?

6 A. I think we probably first started discussing this
7 idea in September, and it was some months later that we
8 received this leaflet.

9 Q. Do you recall what year?

10 A. No. I could go back to my FBI files and tell you
11 when it was.

12 Q. Was it around the time of the major demonstration?

13 A. Yes, yes, no question about that. It was during
14 that period of time. In fact, it was very close to the
15 kick-off of the demonstration, because when we received this
16 document, members of the steering committee of the Black
17 United Front were quite concerned about this, and they
18 assumed that this was sent by the New Mobilization, and they
19 thought this was an answer to our discussion. There were
20 some younger members of the steering committee who felt we
21 should go and have a visit with them. In fact, they were very
22 angry and wanted to confront them. But some of the elders
23 in the Front felt differently, and they stated that "we think
24 somebody may be behind this." They felt they could get at
25 two groups at the same time, the Black United Front and also

1 the Peace Mobilization.

2 The Front's position about participating in the
3 Mobilization was very clear because we felt that it was not
4 doing some other things that we were interested in, so we
5 just stayed away. But it was clear to us that someone had
6 designed a scheme to have the Black United Front fight the
7 Mobilization and -- excuse me.

8 Q. Did you have any idea who wanted these two groups
9 to fight with each other?

10 A. We had our suspicions, but we had no access to
11 information. But we went on the basis of the fact that
12 somebody wanted us to fight. It could have been the CIA, it
13 could have been the FBI. Those were our two main nemeses
14 at the time.

15 Q. Now, during the period that these discussions were
16 going on, did you at any point learn that there was a letter
17 purporting to be from you circulating within the New
18 Mobilization Committee?

19 A. No.

20 MS. PILSBURY: I have no further questions, Your
21 Honor.

22 THE COURT: I didn't get one thing straight: What
23 was Reverend Moore's testimony as to when -- he said he
24 started discussing the idea in September, and he received
25 Exhibit 23 when?

1 MS. PILSBURY: He said that he thought he remembered
2 a few months later, was that your testimony?

3 THE WITNESS: Yes, a few months later, particularly
4 about a week or two, I suppose -- and I'm not absolutely
5 certain of this, Your Honor, and counsel -- but I
6 suspect it was before the Mobilization arrived because this
7 was kind of a psychological profile they thought they had of
8 the Black United Front that would make a supposedly --
9 allegedly violent organization go down and start a physical
10 fight with the New Mobilization, because by that time the
11 Black United Front had taken a position that it would not
12 participate. So what you do, you sent an insulting thing
13 saying that I was a monkey --

14 THE COURT: You have answered my question.

15 THE WITNESS: Thank you, Your Honor.

16 - - -

17 CROSS EXAMINATION

18 By Mr. White:

19 Q. Good morning, Reverend Moore.. My name is --

20 A. Good morning, counselor.

21 Q. My name is David White, and I represent the five
22 FBI agents who are defendants in this case. I want to ask you
23 just a few questions regarding your testimony this morning.

24 Sir, is it your testimony that the idea for the tax
25 or this charge, however it's characterized, arose within the

1 Black United Front?

2 A. Yes.

3 Q. Was it your idea personally, or did someone else
4 suggest it to you?

5 A. No, I don't remember whether it was my idea or not.

6 Q. What generally, sir, was the nature of the idea
7 and the demand or request that was made to the National
8 Mobilization Committee?

9 A. We wanted them to share in the process of helping
10 the city.

11 Q. And how were they to share in that process?

12 A. By sharing their money. There was no other way to
13 help the city.

14 Q. Was the National Mobilization Committee the only
15 organization from whom the Black United Front, or persons
16 within the Black United Front, requested money during that year?

17 A. Oh, no. The Black United Front was working on a
18 lot of projects. The United Givers Fund, we challenged them
19 that year about their racism and set up the United Black Fund.
20 The same year we challenged WJLA's license because it was
21 racist. It had 127 employees, 12 were blacks --

22 THE COURT: Challenged what?

23 THE WITNESS: WJLA's radio license. We asked that
24 the FCC not permit them --

25 MS. BONN: I am going to object to that, Your Honor.

1 THE COURT: Sustained.

2 THE WITNESS: We also asked churches, too, Your
3 Honor --

4 THE COURT: I don't think this is responsive to your
5 question, is it?

6 MR. WHITE: The question specifically was whether
7 requests or demands for money were made from other organiza-
8 tions in addition to the --

9 THE COURT: Well, I guess it is responsive. The
10 objection is overruled.

11 THE WITNESS: We also had requests to the Catholic
12 Church, we had requests on the Feast of Mary, which comes
13 before Advent, which would come before your meeting. We
14 also had requests to Asbury United Methodist Church, that is,
15 St. Stephen's in the Carnation. In fact, they gave us some
16 land that is now housing Urban Village. Metropolitan
17 Methodist Church, we asked them. We didn't discriminate. We
18 wanted money to help, as I said sometime, to keep the twin
19 giants of despair and destruction from destroying the city.

20 Q. (By Mr. White) Now, were any of these requests in
21 writing?

22 A. Yes. In fact, the one to the National Presbyterian
23 Church, the FBI gave me the complete copy of the speech in my
24 FBI file.

25 Q. My question is whether your requests at the time that

1 they were made -- "you" being the Black United Front --
2 whether those requests were made in writing; that is, the
3 requests to the churches or these other organizations?

4 A. Yes, we do have some things that are in writing.

5 Q. You mentioned the Catholic Church. Do you recall
6 what the nature of your demand from the Catholic Church was
7 at that time?

8 A. Yes.

9 Q. What was that?

10 A. We had listed the properties that the Catholic
11 Church had in Washington, D.C. One parcel in Southwest we
12 were particularly interested in that is now being turned over
13 to the community as a result of our asking them -- but to the
14 Catholics and to the Lutherans -- I forgot the Lutherans --
15 we had pointed out the fact that they were responsible for
16 providing the moral and the spiritual -- for slavery. It was
17 time for them to show their repentance by sharing some of
18 their goods and services with the poor, simple as that.

19 Q. In your request to the Catholic Church, did you
20 make that request in writing?

21 A. Yes.

22 Q. Was that a letter to Patrick Cardinal O'Boyle?

23 A. I recall that it was.

24 Q. Did he respond to you, sir?

25 A. I had a meeting with the bishop.

1 Q. Now, with regard to --

2 A. Of course you are reading from the FBI files, as
3 you well know. We did have this meeting.

4 THE COURT: You have to answer the questions.

5 THE WITNESS: Yes, sir.

6 THE COURT: You have answered it.

7 THE WITNESS: Yes, sir, Your Honor.

8 Q. (By Mr. White) Now, with regard to Exhibit 17,
9 which, I believe, is still before you, the letter, is your
10 testimony that the first time you saw this letter was about
11 two weeks ago?

12 A. That's correct.

13 Q. You had no knowledge or information at all about the
14 existence of this letter until two weeks ago?

15 A. I had heard people say that it existed, but about
16 three weeks ago, two weeks ago, I saw it at my house for the
17 first time, and I tell you I was outraged and --

18 THE COURT: You answered the question.

19 THE WITNESS: Yes, sir.

20 Q. (By Mr. White) What were the circumstances in which
21 you saw it, sir?

22 A. The lawyer brought it to me. I had -- that was the
23 first time I saw it, sir.

24 Q. Now, at the time that the demand for money from the
25 National Mobilization Committee was made, did you at any point

1 communicate in writing with the National Mobilization
2 Committee regarding that demand?

3 A. No, we did not.

4 Q. Let's break it down a little bit, sir. Did you
5 personally communicate in writing?

6 A. No.

7 Q. Did anyone on your behalf or on behalf of the Black
8 United Front communicate in writing?

9 A. No.

10 Q. Did at any point anyone in the National Mobilization
11 Committee respond to you in writing or orally with regard to
12 the nature of the demands made in this letter?

13 A. Not to my knowledge.

14 Q. Would it be fair to say that to your knowledge this
15 letter was nonexistent, you had no knowledge at all that the
16 National Mobilization Committee received anything in writing
17 purporting to be from you or the Black United Front?

18 MS. PILSBURY: Your Honor, can he ask for a clari-
19 fication as to whether he is referring to his knowledge now
20 or his knowledge at the time?

21 THE COURT: The objection is sustained.

22 Reform the question in some timeframe.

23 Q. (By Mr. White) You testified there were two
24 meetings outside the Black United Front regarding this request
25 for money; is that correct to the best of your recollection?

1 A. That is correct.

2 Q. And you testified that one meeting occurred at the
3 Pitts Motor Hotel; is that correct?

4 A. That's correct.

5 Q. With members of the Black United Front and certain
6 other persons whose names you do not now recall; is that
7 correct?

8 A. That's correct.

9 Q. What is your recollection as to the second meeting,
10 or the other meeting relating to this matter?

11 A. What do you mean "the other meeting"?

12 Q. Well, sir, I believe your testimony was there were
13 two meetings outside -- to your recollection, there were two
14 meetings outside of the Black United Front --

15 A. I think I stated that I remembered very precisely --
16 and I used the word "precisely" -- that there was one meeting
17 at the Pitts Motor Hotel. The second one, I am not sure. At
18 least I cannot say here that I attended the second meeting,
19 but I do remember the official meeting we had at the Pitts
20 Motor Hotel with members of the steering committee of the
21 Black United Front.

22 Q. Sir, where is this hotel located?

23 A. I think it's located on 14th and Belmont Street, N.W.

24 Q. Now, sir, to get back to my earlier question, at
25 any time in 1969, did the National Mobilization Committee

1 communicate with you, either orally or in writing, regarding
2 the demand which they received in writing from you?

3 A. No.

4 Q. Did the National Mobilization Committee ever make
5 something on the order of an official response to you with
6 regard to the demand for money?

7 A. No.

8 Q. Now, I believe you testified that you did receive the
9 leaflet that's part of Exhibit Number 23. Was it your testimony
10 that the Black United Front had decided not to participate in
11 the demonstration prior to your receipt of this leaflet?

12 A. Yes, because the Black United Front felt very
13 strongly about participating in what we call integrated
14 activities for the simple reason we felt that sometimes those
15 activities did not remain consistent with our need to struggle
16 for 10, 15, 20 years; that the interests of different groups
17 come and go as far as black folks are concerned, so we felt
18 that they could do their thing, but we would not participate.
19 I don't think there's any record that we ever participated in
20 any of the New Mobilization marches, but we were opposed
21 categorically against the war in Vietnam.

22 Q. Now, sir, you made a couple of references to an FBI
23 file. Did you request at some point, through either the
24 Freedom of Information Act or some other means, for access to
25 the file which the FBI kept regarding you?

1 A. No, I did not.

2 Q. Then what were the circumstances in which you had
3 access to the file which you described as your FBI file?

4 A. The Washington Post got it for me.

5 Q. The Washington Post requested it for you?

6 A. Yes.

7 Q. They allowed you to look at it?

8 A. No, they asked if they might have access to the
9 file because they were working on the Jean Seberg case, and
10 I guess they wanted to see if there was any correlation
11 between what the FBI did to me and to others as they did to
12 Miss Seberg. I've always felt that everything that I've done
13 has been public and in keeping with the laws of this country,
14 and I said, "Sure, go right ahead."

15 They sent this file as well as all the information
16 that was obtained in that file, and I am in the process now
17 of trying to get the CIA file.

18 Q. Now, with regard to what you have described as the
19 FBI file, when, to the best of your recollection, did you see
20 the materials obtained by the Washington Post?

21 A. Last May.

22 Q. Have you had an opportunity to examine thoroughly
23 those files?

24 A. Yes, because I'm writing a book called 25 Years of
25 Struggle.

1 Q. Is it your testimony that the letter which you have
2 there, which is Exhibit Number 17, was not there in that file?

3 A. No, it was not.

4 Q. Was there any reference in that file to anything like
5 that letter?

6 A. Well, there are files, as you well know, that there
7 are items in the file that the FBI for one reason or another
8 has decided not to place in the file -- that is, was not
9 available to me when I requested it. They just blocked it
10 out, missing pages, missing in action --

11 Q. My understanding is that you were not the one who
12 requested the file.

13 A. Yes, but I had to sign an affidavit to the fact
14 that it could be requested by the Washington Post.

15 Q. Now, in your examination of the file of what you
16 received, did you see anything which made reference to any
17 such letter or document as Exhibit Number 17?

18 A. No, there was -- to my knowledge, none of this was
19 in my file.

20 MR. WHITE: I have no further questions, thank you,
21 sir.

22 THE COURT: Cross examine?

23 MS. BONN: I have no cross examination.

24 THE COURT: Ms. Pilsbury?

25 MS. PILSBURY: Just one question, Your Honor.

REDIRECT EXAMINATION

By Ms. Pilsbury:

Q. Reverend Moore, with reference to Exhibit Number 23, which is the leaflet, did that appear in your FBI file when you got it?

A. I'm not sure, because I have not looked through -- for this particular item, but I suspect if they had the FBI file, it would be in it. I could tell you tomorrow, if it's necessary.

MS. PILSBURY: No, it won't be necessary.

Thank you. Nothing further, Your Honor.

THE COURT: You may be excused.

THE WITNESS: Thank you, Your Honor.

MS. PILSBURY: Our next witness will be Abraham Bloom, Your Honor.

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ABRAHAM BLOOM

called as a witness, having been previously sworn, testified as follows:

DIRECT EXAMINATION

By Ms. Pilsbury:

Q. Mr. Bloom, I guess you have already given your name, so we'll dispense with that.

Directing your attention to a particular demonstration that there was some testimony about in this case,

1 do you recall the demonstration of November 15, 1969, in
2 Washington, D.C.?

3 A. Very well.

4 Q. That was one that you were involved in organizing?

5 A. Yes.

6 Q. On the day of the demonstration that you were
7 involved in organizing, do you recall whether or not there
8 was a separate demonstration at the Department of Justice?

9 A. There had been a great deal of discussion --

10 THE COURT: The question was was there a separate
11 demonstration at the Department of Justice?

12 THE WITNESS: Yes.

13 Q. (By MS. Pilsbury) First, do you recall whether
14 there was?

15 A. Yes.

16 Q. And again, where was the site of the demonstration
17 that you were involved in organizing?

18 A. The main part, the speaker's stand and stage, was
19 at the Lincoln Memorial, but the crowd extended over towards
20 the Washington Monument, as far as that.

21 Q. Now, with reference to the other demonstration at
22 the Department of Justice, do you know who sponsored that
23 demonstration?

24 A. It was sponsored by the group that had been involved
25 with the trials in Chicago, which stemmed out of the 1968

R.254

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., :
Plaintiffs, :
v. : CA No. 76-1326
JERRY WILSON, et al., :
Defendants. : Vol. V

Washington, D.C.

Tuesday, December 15, 1981

The above-entitled matter came on for trial before
the HONORABLE LOUIS OBERDORFER, United States District Court
Judge, in Courtroom No. 3.

APPEARANCES:

ON BEHALF OF THE PLAINTIFFS:

Mr. Daniel M. Schember, Esq.
Ms. J.E. McNeil, Esq.
Ms. Anne Pilsbury, Esq.

ON BEHALF OF THE FEDERAL DEFENDANTS:

Mr. David White, Esq.
Mr. Dennis F. Hoffman, Esq.

ON BEHALF OF THE DISTRICT OF COLUMBIA DEFENDANTS:

Ms. Laura Bonn, Esq.
Mr. George Barclay, Esq.

Official Reporter: Bruce W. Herzfeld

1 THE COURT: That would give them an opportunity
2 to decide on the validity of your position?

3 MS. McNEIL: Yes, Your Honor.

4 THE COURT: Okay. What is the last actionable act
5 that you allege in the context of statute of limitations in
6 relation to the date three years before the date the complaint
7 was filed?

8 MS. PILSBURY: I think for most plaintiffs the
9 actions in 1974. I would have to look at all of my notes on
10 the plaintiffs.

11 MR. SCHEMBER: That depends on whether we are
12 allowed to claim that acts of surveillance were acts in
13 furtherance of a disruption conspiracy, and that the
14 disruption conspiracy continued after the formal termination
15 of COINTELPRO with the caveat that under certain circumstances
16 approval would be granted, and whether we can claim, as the
17 Church Committee found, that there is a fine line between
18 investigation and disruption, and that acts of investigation
19 can be disruptive in which case --

20 THE COURT: What was the date that COINTELPRO
21 was called off, April of '73?

22 MR. WHITE: '71.

23 MS. PILSBURY: '71.

24 MR. SCHEMBER: However, the memo that terminated
25 COINTELPRO contained a second paragraph which said under

1 circumstances or some circumstances the Bureau would consider
2 other counterintelligence program actions.

3 In addition, we have put in evidence, particularly
4 from the Church Committee, that acts of investigation can
5 have a disruptive effect. If we can claim that acts of
6 investigation do have a disruptive effect, then the last act
7 would be well after January 16, 1973 as to most plaintiffs,
8 since there is an indication of an investigation after that
9 date.

10 THE COURT: Are you telling me that that is a
11 question that ought to be left for the jury as to whether
12 there was any action taken in furtherance of conspiracy in
13 the period open under the statute of limitations, and then
14 if not, and only if they find that there was not some action
15 taken in furtherance of the conspiracy during
16 that period, then they should turn to the fraudulent concealment
17 problem?

18 MR. SCHEMBER: Yes, we would request that other.

19 THE COURT: I hadn't framed it that way, and I
20 don't think any of you did. I will have to look back at your
21 proposal.

22 MR. SCHEMBER: It does depend on whether acts of
23 investigation after July 17, 1973 can be deemed acts in
24 furtherance of the conspiracy --

25 THE COURT: What were the acts after July 17, 1973?

1 MR. SCHEMBER: To my recollection of the evidence,
2 it wouldn't be more than gathering information by informants,
3 maintaining the security index, et cetera. Our stronger
4 claim is that we didn't find out about COINTELPRO until it was
5 revealed --

6 THE COURT: I understand that. But you wouldn't
7 have that problem if there was an act in furtherance of a
8 conspiracy -- you wouldn't have a statute problem if an act
9 was taken in furtherance of that conspiracy after July 17,
10 1973.

11 MR. SCHEMBER: That is true, Your Honor. Your
12 Honor has recognized a discrepancy between mere surveillance
13 and disruptive surveillance and other disruptive acts.

14 THE COURT: I have.

15 MR. SCHEMBER: Although from plaintiffs' position
16 surveillance can be deemed to be a -- the fact that COINTELPRO
17 was terminated in 1971, and the fact that the acts after
18 July 17, 1973 tended to be of the kind that Your Honor has
19 characterized as mere surveillance makes that a difficult claim
20 for us to rely on.

21 THE COURT: All right. I think he stated your
22 position, also: That is, that there were no acts in furtherance
23 of a conspiracy after COINTELPRO was called off.

24 MR. WHITE: If there had been such an act, I think
25 he would have described one, Your Honor.

1 THE COURT: I say I think he described your position.

2 MR. WHITE: As far as the facts are concerned,
3 that is correct. I might add for purposes of the record so
4 it won't appear that I am conceding anything, I believe that
5 whatever the last act was, it would have had to have been by
6 a conspirator, and there has to be attention paid to the
7 position that the individual defendants were in with regard to
8 each other on July 16, 1973 --

9 THE COURT: Which was what?

10 MR. WHITE: I beg your pardon?

11 THE COURT: What do you mean by what position they
12 were in?

13 MR. WHITE: By July 16, 1973, there were only two
14 defendants remaining in the Washington field office, and there
15 was one still at headquarters, but there has not been evidence
16 demonstrated that among those three that any of them did
17 anything.

18 THE COURT: Okay. I will see you at 3:00 o'clock
19 back out here.

20 MS. BONN: Before you leave, can I give you one
21 supplemental instruction to -- I have given our qualified
22 immunity to plaintiffs and to Mr. White for you to consider.

23 THE COURT: Thank you.

24 By the way, are these proposed instructions filed on
25 the record? I would appreciate it if you would, for your sake

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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:
JULIUS HOBSON, et al., :
:
Plaintiff, :
:
vs. : C.A. No. 76-1326
:
JERRY WILSON, et al., :
:
Defendant. :
:
----- x

Washington, D. C.

Wednesday, December 16, 1976

The above-entitled matter convened at 9:15 a.m.,
before HONORABLE LOUIS F. OBERDORFER, United States District
Court Judge, in Courtroom No. 3, U.S. District Courthouse.

APPEARANCES:

On behalf of the Plaintiff:
DANIEL M. SCHEMBER, Esq.
J. E. McNEIL, Esq.
ANNE PILSBURY, Esq.

On behalf of the Federal Defendant:
DAVID WHITE, Esq.
DENNIS HOFFMAN, Esq.

On behalf of the D.C. Defendant:
GEORGE BARCLAY
LAURA BONN, Esq.

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Maki/hws¹
DC Ct

P R O C E E D I N G S

THE COURT: Have you all had a chance to look at the final instructions?

MS. PILSBURY: We need a little more time. We got them about five minutes ago.

THE COURT: I will give you five minutes. I will see you at a quarter to ten.

(Short recess.)

THE COURT: Any preliminary matters?

MS. PILSBURY: We are ready to proceed, Your Honor.

THE COURT: Fine.

MS. BONN: We have a couple of preliminary matters to be taken up at the Bench.

THE COURT: Yes.

[AT THE BENCH]

THE COURT: Before we proceed, the Courtroom Clerk advised me that the Jury Lounge advised her that the alternate juror whom we excused yesterday had called in to the Jury Lounge to say that he had received a call from some lawyer inquiring, asking him if he would talk to that lawyer presumably about the case.

The juror had the wit to say that he would first check with the Jury Lounge, and I have instructed the Jury Lounge to instruct him not to return that call, and to be

bspl0 1

they may not have had the official memo sent to them; they were a willing partner, a willing participant in CoIntelPro.

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3

Now, finally, we get to the question of--well, there are two remaining questions.

4

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First, let me address the question of whether this suit was filed soon enough or not.

6

7

Now, this is basically a very easy issue, although it probably seems like a difficult one for you.

8

9

There is a requirement that a person who knows he is being injured and knows he has a legal claim, bring his suit within a reasonable length of time or else it is not fair to anybody.

10

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In this case, that reasonable length of time is three years.

14

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The plaintiff had three years from the time they knew about what had happened to them to file the law suit. Now, it is our position that we still don't know much of what went on here. Most of the documents that we have referred to about the "Bananas" leaflet, about interfering with the walkie-talkies, about sending out fake housing forms, we didn't get until after this law suit was filed.

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The plaintiffs didn't know the scope and the breadth and the details of the FBI's activities until 1975 when there was a Senate Subcommittee investigation in Congress and you have had excerpts from that investigation

23

24

25

(2:00 p.m.)

[AT THE BENCH.]

THE COURT: Mr. Pollard, I want to compliment and thank you for responding the way you did in calling the Jury Lounge this morning.

I want to remind you that you are still under oath from having been sworn as a panel member, and I'd like you to just tell us for the record about the telephone conference that you recall that you had and what you said, what the person who called you said and then what you said to the Jury Lounge. The best you can remember.

MR. POLLARD: You mean this morning? You mean today?

THE COURT: Did you not have a telephone call sometime since you were excused about this case?

MR. POLLARD: Somebody called, an attorney. They never talked to me, never got to me.

THE COURT: Who did they talk to?

MR. POLLARD: My mother.

THE COURT: What did she, your mother, say to you?

MR. POLLARD: She said that an attorney called and I was to call them about coming back to this case, so I didn't pay it any mind.

THE COURT: Did they give you a telephone number?

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MR. POLLARD: Yes.

THE COURT: What was the telephone number they gave you?

(The juror hands document to the Court.)

THE COURT: Well, I will ask the clerk to make that as a Court Exhibit 1. That is the phone number.

What did your mother say to you?

MR. POLLARD: Telling me when I got in to call.

THE COURT: What day was this, yesterday?

MR. POLLARD: Uh-huh. About -- after I left here

THE COURT: You what?

MR. POLLARD: I went to my girl's house, so I never really went home, so whoever called --

THE COURT: When did you talk to your mother?

MR. POLLARD: It was last night, yesterday evening.

THE COURT: Last night?

MR. POLLARD: Yes.

THE COURT: What time did you talk to your mother? What time of day?

MR. POLLARD: Let's see. I left here -- it was about -- oh, from here I went to my girl's house, and I went home. It was sometime during the afternoon, stopped in.

THE COURT: Yesterday afternoon?

MR. POLLARD: Yeah. I said "Hello" to my mom.

hws14

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THE COURT: What did your mother say?

2

MR. POLLARD: That an attorney called, told me to

3

call him.

4

THE COURT: And handed you that note?

5

MR. POLLARD: Yes.

6

THE COURT: That is all the conversation you had

7

with your mother?

8

MR. POLLARD: Yes. That's all.

9

THE COURT: Then what did you do, if anything,

10

about the --

11

MR. POLLARD: The number?

12

THE COURT: -- the number?

13

MR. POLLARD: Went to my girl's house, spent the

14

night and then I thought about it. I called since I didn't

15

get any answer, I didn't worry about it.

16

THE COURT: Did you call the Jury Lounge at the

17

time?

18

MR. POLLARD: Yes.

19

THE COURT: What did you say to them?

20

MR. POLLARD: I called the young lady. I asked,

21

I said, "Tell whoever it is get in touch with me where I

22

am at." I never got the call. I even told -- I left my

23

gir's number to call me there. I never got a call there.

24

THE COURT: When did you call the Jury Lounge?

25

MR. POLLARD: This was --

hws15 1

THE COURT: Today or yesterday?

2

MR. POLLARD: Wasn't today, it was yesterday evening.

3

4

THE COURT: Yesterday you called the Jury Lounge?

5

MR. POLLARD: Yes.

6

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THE COURT: Anything else you think we should know about what happened?

8

9

MR. POLLARD: Other than that, I got that, and then I didn't think about it any more. I went to work and --

10

THE COURT: You got another call?

11

MR. POLLARD: I got a call.

12

THE COURT: What did the call say?

13

14

MR. POLLARD: And I came in, and told me to report to Jury Lounge and to see you, so, okay, so I quickly --

15

16

THE COURT: Tell you what do about calling anybody about this, tell you whether to talk to anybody about it?

17

18

19

MR. POLLARD: After that, I didn't talk to anybody, I came straight on in.

20

THE COURT: Well, okay.

21

22

Does either counsel have any questions they want to ask him?

23

MS. PILSBURY: No, Your Honor.

24

MR. HOFFMAN: No, Your Honor.

25

THE COURT: You are excused, Mr. Pollard.

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1 Again, many thanks.

2 MR. POLLARD: Okay.

3 THE COURT: You can go about your business.

4 MR. POLLARD: All right.

5 MS. PILSBURY: Your Honor, I did not realize there
6 was a local rule that prohibited counsel apparently contacting
7 undischarged jurors, and it is my fault, and I apologize.

8 When you brought it up this morning, I had some-
9 body check and I called John Colliers, an attorney I know in
10 town here, and he said there was a local rule. I realize
11 that now, and I am the one responsible. We never talked to
12 him. And what we did, when we called -- I didn't call him.
13 I asked someone else to -- was simply left a message that an
14 attorney had called; didn't say it had anything to do with
15 this case.

16 It was after we called a couple of times we were
17 alarming his mother, that last night, when someone called
18 again, and we explained that we wanted to talk to him about
19 this case, and wouldn't be calling again, so they wouldn't
20 be worried.

21 We never did talk to him, and had not reached him.
22 Of course, I would have told him not to talk to any of the
23 other jurors. I have done this in other cases. I should
24 have known --

25 THE COURT: There is local counsel in this case.

hws17

1 MS. PILSBURY: I know. They didn't have anything
2 to do with this. This was my idea.

3 THE COURT: Don't you have a conspiracy theory in
4 your case?

5 MS. PILSBURY: I plead guilty, Your Honor.

6 THE COURT: Do you have any questions?

7 MR. HOFFMAN: No, Your Honor.

8 THE COURT: All right.

9 While you are all here, I have got another more
10 informed edition of a Special Verdict Form. It is a little
11 better organized. We would like you all to eyeball that
12 very closely. There is one for each of you.

13 Bring back the jury.

14 [IN OPEN COURT:]

15 (The jury enters the room.)

16 THE COURT: Good afternoon, ladies and gentlemen.

17 We are now hearing the closing argument on behalf
18 of the District of Columbia defendants.

19 Ms. Bonn:

20 MS. BONN: Thank you, Your Honor.

21 May it please the Court, ladies and gentlemen of
22 the jury, my name is Laura Bonn, and with my colleague, we
23 have the privilege and duty of representing the District of
24 Columbia defendants.

25 I'd just like to take a moment and review the

dm 15 1 just had suspicions. They didn't have hard facts. They
2 didn't have any hard facts until 1975 and 1976 when the Senate
3 Committee started investigating CoInTelPro and all of these
4 adocuments started coming out for the first time,

5 The Robert Wall article you heard reference to,
6 some of the plaintiffs didn't even read, only talked about
7 the Black United Front. It didn't talk about the housing
8 forms, fictitious housing forms. It didn't talk about
9 interfering with the marshals' radios. It didn't talk about
10 most of CoInTelPro. It was only written by one disgruntled
11 agent. It was like a press leak in effect and the defendants
12 are arguing in this article some of them didn't read it,
13 they should have had enough sense to know what the FBI was
14 doing in this secret program the FBI didn't want anybody to
15 know about. They should have rushed into court at that
16 point.

17 In 1975, the D.C. City Council held hearings for
18 the first time so that the City Council could find out what
19 its own Metropolitan Police Department Intelligence Division
20 was doing and that is when some of this information began to
21 come out.

22 So I would suggest to you until 1975 and 1976 these
23 plaintiffs didn't really know enough to file suit. When
24 they found out, they filed suit. And they filed suit quickly.
25 They filed suit by the summer of '76, a time when many of the

dm 18 1 the bananas leaflet, or interfering with walkie-talkies or
2 sending out fake housing forms.

3 All the FBI was telling the Court, I assume under
4 oath, in New York at that time, was that they were just
5 interested in how many people come to these demonstrations.
6 That is all, Your Honor. That was a public statement back
7 then. That wasn't true.

(8) 8 We now know they were doing a lot more than that.
9 But they deliberately concealed that fact, and because they
10 deliberately concealed that fact, the plaintiffs were at a
11 distinct disadvantage and they couldn't file the suit until
12 they had that information. Believe me, if the plaintiffs had
13 known what they know now, they would have filed sooner.
14 They would have filed as soon as they found out when they
15 began to see what CoInTelPro was about, they put 2 and 2
16 together. They put together the facts that they knew there
17 had been some surveillance of their activities, and they
18 knew from the Senate Committee hearings the type of people
19 that the FBI was trying to disrupt and they figured, "Hey,
20 that is us they are talking about. That is us they were
21 after."

22 But they didn't know the specifics until after they
23 filed this lawsuit.

24 Now, in reference to some of the District of
25 Columbia defendants, there has been discussion of the fact

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., :
Plaintiffs, :
v. : CA No. 76-1326
JERRY WILSON, et al., : VOLUME V
Defendants. :

Washington, D.C.

Thursday, December 17, 1981

The above-entitled matter came on for trial before
the HONORABLE LOUIS OBERDORFER, United States District Court
Judge, in Courtroom No. 3.

APPEARANCES:

ON BEHALF OF THE PLAINTIFFS:

Mr. Daniel Ms. Schember, Esq.
Ms. J.E. McNeil, Esq.
Ms. Anne Pilsbury, Esq.

ON BEHALF OF THE FEDERAL DEFENDANTS:

Mr. David White, Esq.
Mr. Dennis F. Hoffman, Esq.

ON BEHALF OF THE DISTRICT OF COLUMBIA DEFENDANTS:

Ms. Laura Bonn, Esq.
Mr. George Barclay, Esq.

Official Reporter: Bruce W. Herzfeld

P R O C E E D I N G S

Whereupon, the following proceedings were had out of the presence and hearing of the jury:

THE COURT: Did you ladies and gentlemen get my note about making a list? I would like to have that as neutral as possible. It seemed to me the jury needed to have a lineup, and I thought you would be the best persons --

MS. PILSBURY: Did you want a list of the plaintiffs job titles as well, Your Honor?

THE COURT: Something that identified them one from another. I welcome your suggestions. What did you say in the complaint?

MS. PILSBURY: We described them basically in terms of their political activities. Won't the jury have the complaint?

THE COURT: No.

MS. PILSBURY: In that case I would use the language in the complaint, if I could have a second to write it out.

THE COURT: I would like you to **just do that**, and we will make sure nobody is prejudiced by it, by exchanging it, and I will send it back and have it typed in time to send back to the jury.

I am going to take a brief recess.

-- --

Thereupon, a short recess was taken.

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- - -

Thereupon, the following proceedings were had out of the presence and hearing of the jury:

THE COURT: I'm having it typed, and we'll settle them after the jury is retired and before I send them in. If anybody has any quarrel with each other's, we'll resolve that.

Miss Bonn?

MS. BONN: Yes, Your Honor. I have a preliminary question that I realized after we adjourned last evening with respect to the standard instructions.

It was my recollection from looking at the ones you gave us before yesterday that the missing witness instruction was not going to be given. I'm still confused on that, and I would like to inquire --

THE COURT: I don't think I planned to give that.

I have a failure to produce stronger available evidence.

MS. BONN: I understand. It was our position that there should be no missing instruction.

THE COURT: Pardon?

MS. BONN: It was our position that there would be no basis for a missing witness instruction in this case, however in discussing with plaintiffs' counsel, I overheard that there was a missing witness instruction included, and I

1 just wasn't sure if I was looking at the most updated list.

2 THE COURT: Did you see it in what I gave you?

3 MS. BONN: No, Your Honor, I did not see it in the
4 most recent submissions that you gave us yesterday.

5 THE COURT: I didn't mean to include it. It isn't
6 included.

7 MS. BONN: That's what I was inquiring.

8 THE COURT: There was the one that I mentioned to
9 you.

10 MS. BONN: I'm aware of that, Your Honor. Thank you.

11 THE COURT: Anything else?

12 MS. PILSBURY: Your Honor, I would again ask that
13 the jury be told about the possibility of having testimony
14 read back, and the reason for that, I just want to make clear,
15 is that in a trial this long, if they don't know that they
16 can do that, they're going to spend a lot of time debating
17 who said what, and they'll have varying memories that we have
18 ourselves even among counsel, and I just think that's not the
19 best evidence, and it would be better for them to hear what
20 was actually said in court, and I note the housekeeping
21 instructions didn't include that.

22 MS. BONN: Your Honor, may I address that?

23 The District of Columbia defendants would object to
24 the evidence being read over to the jurors. Their memory
25 controls, whether the trial be a month long or a week long,

1 and they are told that, charged that, at the beginning of the
2 trial and know to listen to the evidence very carefully.

3 THE COURT: My position is that if they -- has been
4 always -- if they get to a point where they feel the need to
5 have something read to them, I will either have it read to
6 them or get some stipulation of counsel as to what the fact
7 is, but I am not going to invite them in advance to come back
8 and have things read.

9 MS. BONN: Thank you.

10 THE COURT: Bring back the jury.

11 - - -

12 Thereupon, the following proceedings were had in
13 the presence and hearing of the jury:

14 THE COURT: Good morning, ladies and gentlemen.

15 The time has arrived for me now to give you your
16 instructions on the law and your instructions on how to go
17 about your job--and it's going to be a formidable job -- of
18 rendering verdicts in this case.

19 At the end of the delivery of the instructions, I
20 am going to hand you a verdict form which you will use in
21 the jury room to work out your verdict. There will be one
22 form for each plaintiff, and on it it will have the three or
23 four principal issues that you must resolve: namely, whether
24 any plaintiff has suffered injury proximately caused by a
25 defendant or by a conspiracy of which a defendant was a

1 member; whether a defendant, even though he may have caused
2 injury, is immune from liability from damages for it; whether,
3 even if the defendant's act caused injury and he is not immune,
4 the plaintiffs filed their claim too late -- you have heard
5 the reference to the statute of limitations; and then finally,
6 if you find that the defendants' act did proximately cause
7 injury to the plaintiff of the kind that I define, that the
8 defendant was not immune, the plaintiff filed a claim in time,
9 a form in which you calculate what, if any, damages a particular
10 plaintiff may be entitled to from a particular defendant.

11 I am first going to describe to you some of the
12 general principles that govern the job of work of any juror
13 in any case, principles which tell you how to go about what
14 you have to do. Then when I get through with that, I will
15 come back to the principles of law that apply to this
16 particular case.

17 My function has been to conduct this trial in an
18 orderly, fair, and efficient way; to rule on questions of
19 law that have arisen in the course of the trial; and now to
20 instruct you as to the law which applies to this case.

21 It's your duty to accept the law as I state it to
22 you, and I will state it to you.

23 These instructions are long, relatively, to the
24 instructions that are given in other cases, because the case
25 has been long and involves a number of people.

1 You should consider all the instructions as a
2 whole. You may not disregard any instructions. You may not
3 give special attention to any one instruction. You may not
4 question the wisdom of any rule of law.

5 Your function as jurors is to determine the facts.
6 You are the sole and exclusive judges of the facts. You alone
7 determine the weight, the effect, and the value of the evidence.
8 You alone determine the credibility of the witnesses.

9 You should determine the facts without prejudice,
10 without fear, without favor, solely from a fair consideration
11 of the evidence.

12 You should consider the evidence in the light of your
13 own observations and your own experience in the affairs of
14 life.

15 My actions in the trial in ruling on motions,
16 objections by counsel, or comments to counsel, or in questions
17 to witnesses, or in setting for the law in these instructions
18 are not to be taken by you as any indication of my opinion
19 as to how you should determine the issues of fact. If I
20 have expressed or intimated any opinion as to the facts, you
21 are not bound by that opinion. What the verdict shall be is
22 your sole and exclusive duty and your sole and exclusive
23 responsibility.

24 Your attitude at the outset of these deliberations
25 are matters of great importance. It is not appropriate for a

1 juror, upon entering the jury room, to voice an emphatic
2 expression of an opinion on the case or to announce a deter-
3 mination to stand for a certain verdict. When a juror does
4 that at the outset, that juror's sense of pride may cause the
5 juror to hesitate to recede from an announced position if
6 and when that position is shown to be wrong. Remember, you're
7 not partisans, you're not advocates in this matter, you're
8 judges. The final test of the quality of your service will
9 lie in the verdict which you return in this courtroom, not
10 in the opinions that you may hold before agreement on a
11 verdict.

12 Bear in mind that you will make a definite contri-
13 bution to the efficient administration of justice if you arrive
14 at a just verdict and a proper verdict in this case. To that
15 end I remind you that in your deliberations in the jury room,
16 your purpose is not to support your own opinion, your purpose
17 is to ascertain and declare the truth.

18 It is your duty as jurors to consult with one
19 another and to deliberate with a view to reaching an agreement
20 if you can do so without violence to your individual judgment.
21 To each of you I would say that you must decide the case for
22 yourself, but you should do so only after discussing it with
23 your fellow jurors, and you should not hesitate to change an
24 opinion when convinced that your opinion is erroneous.

25 You should not be influenced to vote in any way on

1 any question submitted to you by the single fact that a
2 majority of the jurors or any of them favor a particular
3 decision or hold an opinion at variance with your own. In
4 other words, you should not surrender your honest convictions
5 concerning the effect or weight of evidence for the mere
6 purpose of returning a verdict or solely because of the
7 opinion of the other jurors.

8 Now, as I said to you, you consider the instructions
9 as a whole. If, in these instructions, any rule, direction,
10 or idea is stated in varying ways, no emphasis by that is
11 intended by me, and none should be inferred by you. That is
12 why I say you are not to single out any certain sentence or any
13 individual point or instruction and ignore the others. But
14 you are to consider all the instructions as a whole and to
15 regard each in the light of all the others.

16 The law of the United States permits a judge to
17 comment to the jury on the evidence in a case. I don't
18 think I have commented on the evidence, but if I have, or
19 if you think I have, you should understand that you are
20 entitled to make your own judgment and your own decision about
21 the facts. You are free to disregard any intimation that you
22 think you have seen from me as to what I think about the
23 facts. You, the jury, are the sole and exclusive judges of
24 all issues of fact in this case.

25 During the course of the trial I did ask questions

1 of the witnesses in order to obtain some information or bring
2 out some fact or facts not fully developed in testimony.
3 You should not take my questions to witnesses as any
4 indication of my opinion as to how you should determine the
5 issues of fact. As I say, you are at liberty to disregard any
6 comment I have made in arriving at your own findings as to the
7 facts.

8 When you were selected, I questioned you carefully --
9 all the panel members I questioned carefully -- to make as sure
10 as I could that you would decide and consider the evidence of
11 this case without sympathy, prejudice, or passion for or
12 against any party in this action. I questioned you particularly
13 to determine whether any of you had such strong feelings for
14 or against the Federal Bureau of Investigation, or for or
15 against the District of Columbia police, or about the Vietnam
16 war, or the people who were for or against it, or about
17 racial problems; such strong feelings that you would not be
18 able to decide this case fairly and impartially on the basis,
19 solely on the basis, of the evidence adduced in this courtroom
20 before your eyes and on the law as I've stated to you. I
21 mention this again because the evidence and the arguments
22 could have stirred sympathy, prejudice, or passion which you
23 did not have or remember when you were selected.

24 I remind you again that you must put your feelings
25 out of your mind to the fullest extent you can and decide this

1 case with cold detachment on the basis of the evidence adduced
2 in this courtroom and the law as I state it to you, without
3 regard to sympathy, prejudice, or passion for or against any
4 party to the action.

5 You may consider only the evidence properly admitted
6 in the case. Evidence includes the sworn testimony of the
7 witnesses, exhibits admitted into evidence, and facts stipulated
8 to by counsel.

9 The Court has identified to you stipulations. A
10 stipulation is an agreed statement of fact between counsel,
11 and you may regard such stipulated facts as undisputed
12 evidence.

13 As I say, you are to consider only the evidence in
14 the case, but in your consideration of the evidence, you are
15 not limited solely to the statements of the witnesses, you
16 are permitted to draw from facts which you find to have been
17 proved such reasonable inferences as seem justified in the
18 light of your own experience. An inference is a deduction or
19 conclusion which reason and common sense lead you to make
20 from facts which have been proved.

21 If you should find that it was peculiarly within
22 the power of a party to produce stronger and more satisfactory
23 evidence than that which was offered on a material point,
24 you should view with caution the weaker and less satisfactory
25 evidence actually offered on that point unless the failure to

1 produce the stronger and more satisfactory evidence has been
2 satisfactorily explained.

3 Now, it's been the duty of counsel on each side to
4 object when the other side offers testimony or other evidence
5 which counsel believes is not properly admissible. If, during
6 the course of the trial, I sustained an objection by one
7 counsel to a question asked by the other counsel, you are to
8 disregard the question, and you must not speculate as to what
9 the answer would have been. If, after a question was asked
10 and an answer given by a witness, and I rule that the answer
11 should be stricken from the record, you are to disregard both
12 the question and the answer in your deliberations.

13 You have heard statements of counsel in argument,
14 particularly. I think I told you at the outset, and I
15 remind you again, that statements of counsel are not evidence
16 and should not be considered in evidence unless such statements
17 were made as part of a stipulation, which I have referred to
18 earlier.

19 If any reference by me or by counsel to matters of
20 evidence does not coincide with your own recollection of the
21 evidence when you get to the jury room and start deliberating,
22 it's your recollection that should control your deliberations,
23 not what I said about it, and not what the lawyers said about
24 it.

25 In this case there were instances where certain evidence

1 was admitted as against one or more of the parties, but
2 denied admission as against others. You remember, for
3 example, that there are two groups of defendants: There are
4 the FBI defendants, and the District defendants. I called
5 your attention to that when I made the rulings, but I urge
6 you again to keep in mind the distinctions pointed out in
7 such rulings and their effect. It may be difficult for you,
8 when considering the case for or against any one party, to
9 disregard completely any evidence that you heard that doesn't
10 relate to that party, but it is your plain duty with respect
11 to that evidence, and you must do so.

12 Now, ladies and gentlemen, the party who asserts the
13 affirmative of an issue has the burden of proving it. The
14 burden he must generally carry is by what is termed "a
15 preponderance of the evidence." The term "preponderance of
16 the evidence" does not mean such degree of proof as produces
17 absolute or mathematical certainty, nor does it mean proof
18 beyond a reasonable doubt; that is, proof to a moral certainty,
19 as is required in a criminal case. "Preponderance of the
20 evidence" means such evidence as when weighed against that
21 opposed to it has the more convincing force.

22 It is a question of quality, not of quantity. That
23 is to say, it is not necessarily determined by the number of
24 witnesses or documents bearing on a certain version of the
25 facts. To establish by a preponderance of the evidence is to

1 prove that something is more likely so than not so. In other
2 words, a preponderance of the evidence means such evidence as
3 when considered and compared with the evidence opposed to it
4 has the more convincing force and produces in your mind's belief
5 that what is sought to be proved is more likely true than not
6 true.

7 A party has succeeded in carrying the burden of
8 proof by a preponderance of the evidence on an issue of fact
9 if, after consideration of all the evidence in the case, the
10 evidence favoring that party's side of the issue is more
11 convincing to you and causes you believe on that issue that on
12 that issue the probability of truth favors that party.

13 If, however, you believe that the evidence on an
14 issue is evenly balanced, then your finding on that issue
15 must be against the party upon whom the burden of proof on
16 that issue rested.

17 In determining whether any question has been proved
18 by a preponderance of the evidence, you should consider all
19 the evidence bearing on the question regardless of who produced
20 it. A party is entitled to the same benefit from the evidence
21 that favors that party when produced by an adversary as when
22 the party produced the evidence himself.

23 There are two types of evidence from which you may
24 find the truth as to the facts of the case: direct evidence
25 and circumstantial evidence.

1 Direct evidence is the testimony of one who asserts
2 actual knowledge of a fact, such as the testimony of an
3 eyewitness as to what he saw.

4 Circumstantial evidence is proof of a chain of
5 facts and circumstances from which the existence or nonexis-
6 tence of a fact in issue may logically be inferred.

7 Both types of evidence are entitled to your consi-
8 deration. The law makes no distinction between the weight to
9 be given to either direct or circumstantial evidence presented
10 to you, nor is a greater degree of certainty required of circum-
11 stantial evidence than of direct evidence. You should weigh
12 all of the evidence in the case and find the facts in accor-
13 dance with a preponderance of all the evidence, both direct
14 and circumstantial.

15 Now, ladies and gentlemen, you have the task of
16 evaluating the credibility of witnesses. You must consider and
17 weigh the testimony of all the witnesses who have appeared
18 before you. As I have said, you are the sole judges of the
19 credibility of the witnesses. In other words, you alone are
20 to determine whether to believe any witness and the extent to
21 which any witness should be believed. If there is any
22 conflict in the testimony, it is your function to resolve the
23 conflict and to determine where the truth lies.

24 In reaching a conclusion as to the credibility of
25 any witness, and in weighing the testimony of any witness,

1 you may consider any matter that may have a bearing on the
2 subject. You may consider the demeanor and the behavior of
3 the witness on the witness stand; the witness' manner of
4 testifying; whether the witness impresses you as a truthful
5 individual; whether the witness impresses you as having an
6 accurate memory and recollection; whether the witness has any
7 motive for not telling the truth; whether the witness had
8 full opportunity to observe the matters concerning which he
9 has testified; whether the witness has any interest in the
10 outcome of the case, or friendship or animosity toward other
11 persons concerned in the case. You may consider the
12 reasonableness or unreasonableness, the probability of
13 improbability of the testimony of a witness in determining
14 whether to accept it as true and accurate. You may consider
15 whether the witness has been contradicted or corroborated by
16 other credible evidence.

17 If you believe that any witness has shown himself
18 to be biased or prejudiced either for or against either
19 side in this trial, you may consider and determine whether such
20 bias or prejudice has colored the testimony of such witness so
21 as to affect the desire and the capability of that witness to
22 tell the truth.

23 You should give the testimony of each witness such
24 weight as in your judgment it is fairly entitled to receive.

25 There has been testimony of FBI agents and police

1 officers. Their testimony should be considered by you just
2 as any other evidence in the case, and in evaluating the
3 credibility of such witnesses, you should follow the same
4 guidelines which you apply to the testimony of any other
5 witness. In no event should you give either greater credence
6 or lesser credence to the testimony of any witness merely
7 because he or she is a present or former police officer or
8 FBI agent.

9 Now, I say the weight of the evidence is not neces-
10 sarily determined by the number of witnesses testifying on
11 either side. You should consider all the facts and all the
12 testimony in determining which of the witnesses' testimony is
13 worthy of greater credence. You may find the testimony of a
14 smaller number of witnesses on one side is more credible than
15 the testimony of a greater number of witnesses on the other
16 side.

17 In the present case certain testimony has been
18 read to you by way of deposition. Where that deposition was
19 offered in evidence, it is entitled to the same weight as if
20 the deponent was testifying in court.

21 The testimony of a witness may be discredited or
22 impeached by showing that a witness has previously made
23 statements which are inconsistent with his present testimony.
24 A prior statement is admitted into evidence solely for your
25 consideration in evaluating the credibility of the witness.

1 You may consider the prior statement only in connection with
2 your evaluation of the credence to be given to the witness'
3 present testimony in court. You must not consider the prior
4 statement as establishing the truth of any fact contained in
5 that statement.

6 If you believe that any witness has been impeached
7 and discredited, it is your exclusive province to give the
8 testimony of that witness such weight, if any, as in your
9 judgment it is fairly entitled to receive.

10 Now, in this case, as you know, there are several
11 plaintiffs and several defendants. The case of each is
12 separate from and independent of that of the other. The law
13 permits them to join as plaintiffs here solely because their
14 claims involve the same subject matter. However, their
15 rights, if any, are separate, not joined. The instructions I
16 give you apply equally to each plaintiff unless otherwise
17 stated, and you will determine each plaintiff's case indepen-
18 dently and as a separate action and return a separate verdict
19 in each case for the plaintiff and for the defendants. This
20 will be reflected in, as I think I told you -- there will be
21 a verdict form, a separate verdict form, for each plaintiff
22 on which there are listed all the defendants.

23 You are instructed that while there are a number
24 of defendants in this action, it does not follow that if one
25 is liable, all the rest are liable, or any of the rest are

1 liable. Each is entitled to a fair consideration of his or
2 her own defense, and it is not to be prejudiced by the fact,
3 if it should become a fact, that you may find against one
4 or the other of them. The general instructions I give you
5 govern the case as to each defendant to the same effect as
6 if that defendant were the only defendant in the case.

7 If you find that no defendant is liable, your verdict
8 should be in favor of all the defendants against the plaintiffs.
9 If you should find that only one defendant is liable, then
10 your verdict should be in favor of the plaintiff against that
11 defendant alone, and so forth.

12 One of the words that you will hear when I get to
13 the particular matters is "proximate cause." On injury or
14 damage, damage is said to have been proximately caused by
15 an act whenever it appears from a preponderance of the
16 evidence that the act played a substantial part in bringing
17 about the injury or damage. Moreover, it must be shown that
18 the injury or damage was either a direct result or a
19 reasonably probable consequence of the act.

20 Now, the plaintiffs -- we're now past the prelimina-
21 ries. Now we are down to the things that apply to this case.

22 The plaintiffs here claim that the defendants
23 injured rights guaranteed to the plaintiffs by the First
24 Amendment of the United States Constitution to express freely
25 their political views and attitudes, and to debate publicly

1 issues, and to assemble publicly, and to petition the
2 government for redress of grievances. These are among the
3 so-called First Amendment rights, along with the freedom of
4 the press and freedom of religion. The government and people
5 working for the government may not interfere with these
6 rights except under certain very limited conditions and in
7 certain very limited ways. Therefore, the questions before
8 you basically are whether the defendants, acting individually
9 or as alleged co-conspirators -- a term that I will explain
10 to you further -- injured a plaintiff by preventing that plain-
11 tiff from exercising, or by impeding that plaintiff in the
12 exercise, of rights guaranteed by the First Amendment to
13 assemble at a particular time and place, or to associate
14 with one or more persons generally to further political aims
15 and to engage in political activity.

16 As I have stated, people working for the government
17 may lawfully interfere with speech, assembly, and association
18 that have a political purpose, but only in certain very
19 limited conditions and in very limited ways. For example,
20 government officials have a very important duty by using
21 reasonable means to prevent domestic violence to persons and
22 property; to prevent interruption of orderly activities of a
23 community, such as traffic; to protect the nation from foreign
24 enemies; and to investigate and prevent crime.

25 Defendants claim that if they committed the acts

1 about which plaintiffs claim, they did so for those purposes.
2 It's necessary for you to decide, therefore, whether a
3 reasonable person in a defendant's situation could believe
4 reasonably that his conduct would not impede a plaintiff's
5 exercise of First Amendment rights, or that in so impeding,
6 the defendant was nevertheless acting with a reasonable good
7 faith belief that his conduct was lawful.

8 Finally, if you find that a defendant's conduct
9 injured a plaintiff's First Amendment rights, and that conduct
10 was not justified, you must proceed to determine whether that
11 defendant or the conspiracy, which you may find or may not
12 find, but the conspiracy to which he allegedly belonged
13 deliberately concealed from that plaintiff knowledge of
14 important facts about that plaintiff's case in such a way
15 that that plaintiff could not have discovered by the exercise
16 of due diligence enough facts to file a suit in court in
17 the time allowed by the statute of limitations for filing a
18 suit.

19 Then, of course, if you find that the plaintiff
20 was injured, that the defendant was not immune, that the
21 plaintiff filed the suit in ample time, then you must turn to
22 decide how much, if any, damages, is owed to the plaintiff and
23 by whom.

24 Now, I want to give you some definitions of these
25 terms that I've just used and that I am going to use again.

1 The First Amendment of the Constitution guarantees
2 from reasonable interference by any government official, quote,
3 "freedom of speech," unquote. That's -- those are words
4 from the First Amendment -- and, quote, "the right of the
5 people peaceably to assemble and to petition the government
6 for a redress of grievances," end of quote.

7 A person's right to speak and to assemble for those
8 purposes includes the right to join with or associate with
9 others and to have others join and associate with that person
10 for the purpose of political expression.

11 Let me read that again: A person's right,
12 Constitutional right, to speak and to assemble for purposes
13 of political expression includes the right to join with or
14 associate with others, and to have others join and associate
15 with that person for the purpose of political expression.

16 When I use the terms "associate" and "assemble,"
17 I refer to the act or acts of association, assembly and
18 association, in support of a particular cause, such as
19 participation in a particular demonstration, or contributing
20 time or money to an organization advocating a cause, or
21 signing a petition or letter in support of that cause.

22 When I speak of "impeding association or assembly,"
23 I include impeding another person from assembling or associating
24 with a plaintiff or with an organization to which that
25 plaintiff belonged and in which that plaintiff is active.

"Impede"
Jury Inst.

1 "Impeding" means making substantially more burdensome. Acts
2 of a defendant have impeded association or assembly if those
3 acts which made that association or assembly substantially
4 more burdensome than it would have been if the act or acts --
5 if the act of a defendant or acts of a conspiracy to which a
6 defendant belonged had not been committed.

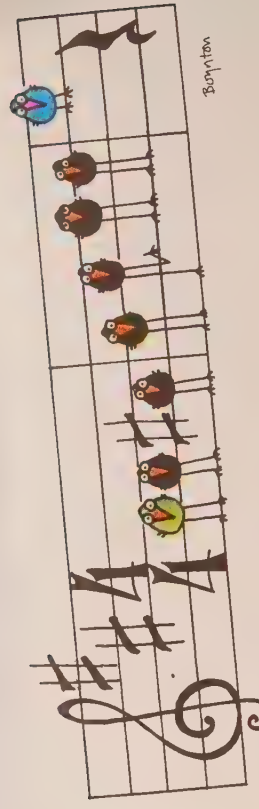
7 When I speak of injury to First Amendment rights, I
8 mean preventing or impeding the type of speech, assembly,
9 petitioning or association that I have described. This
10 injury must not be subjective, something that exists only in
11 the plaintiff's mind, it must be an actual injury that an
12 objective person can recognize. The injury may be tangible,
13 or it may be intangible, but it must be an injury that you
14 can see has impeded free exercise or enjoyment of First
15 Amendment rights by a particular plaintiff, as I have defined
16 "impeded."

17 Now, I said earlier that I would give you the
18 definition of a conspiracy. Now, this isn't easy, and you
19 have to listen closely.

20 A conspiracy is a combination of two or more
21 persons acting together for the purpose of injuring someone
22 else in the exercise of that other person's First Amendment
23 rights. A conspiracy is a combination of two or more
24 persons acting together for the purpose of injuring someone
25 else in the exercise of that other person's First Amendment



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(NOTES)

1 rights.

2 To have participated in a conspiracy, a person need
3 not have joined it at its conception. A conspiracy may add
4 participants over time. Each participant in a conspiracy
5 need not know the exact limits of the illegal plan. Each
6 participant in a conspiracy need not know the identity of all
7 the other participants in the conspiracy.

8 However, in order to be a conspiracy, all the
9 participants must share the same general conspiratorial
10 objective. There exists among conspirators a meeting of the
11 minds which creates an understanding to achieve the conspiracy's
12 objective. Thus, all participants know the common plan. Each
13 knows the conspiracy's essential nature and general scope.

14 Participants in a conspiracy may be held liable for
15 injury which the conspiracy caused to others only if one or
16 more members of the conspiracy committed at least one overt
17 act in furtherance of the conspiracy.

18 Now, I will define "overt act" for you in time --
19 I will define it right now. An overt act is simply any act
20 knowingly committed by one of the conspirators in an effort
21 to effect or accomplish some object or purpose of the
22 conspiracy.

23 To make defendants liable for injury which the
24 conspiracy caused to others, plaintiffs must prove in this
25 kind of a case that the conspiracy discriminated with hostile

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1 intent against a group or class to which a plaintiff belonged
2 because of the political purposes and activities of that
3 group or class, with a view to singling out that group or
4 class for interference with its rights equal to that of the
5 general public to assemble or associate for political purposes.

6 Intent, as I have used it there, means that a person
7 had the purpose to do a thing. It means that he acted with
8 the will to do the thing. It means that he acted consciously
9 or voluntarily, and not inadvertently or accidentally.

10 You have heard me speak of immunity. All of the
11 individual defendants in this case were at the time that the
12 plaintiffs claimed that they injured them, the plaintiff, all
13 the defendants were employees of the Metropolitan Police
14 Department or the Federal Bureau of Investigation. Under the
15 law a public servant is not liable for money damages because
16 he violated First Amendment rights and injured a person if
17 the public servant's conduct causing the injury occurred in
18 the course of his public employment, if the government employee
19 was acting at the time with a good faith belief that his
20 conduct was lawful, and if under the circumstances that good
21 faith belief was reasonable.

22 Now, this is what you have to do to decide whether
23 or not there was a conspiracy, whether the conspiracy injured
24 a plaintiff, and whether a particular defendant belonged to
25 it: Plaintiffs claim that the defendants agreed among

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re conspiracy

1 themselves to one or more conspiracies. That is, they claim
2 that there was a conspiracy amongst the FBI defendants, and
3 a conspiracy amongst the Metropolitan Police Department
4 defendants, and then a conspiracy between the two groups.
5 Plaintiffs claim that the defendants agreed among themselves
6 to one or more conspiracies to disrupt, discredit, and
7 neutralize without just cause plaintiffs' peaceful political
8 activities.

9 Plaintiffs further claim that one or more of the
10 participants in the conspiracy committed specific acts
11 intended to carry out the purposes of the conspiracy or
12 conspiracies.

13 Finally, plaintiffs claim that one or more of the
14 acts committed to carry out the purposes of the conspiracy or
15 conspiracies injured plaintiffs in violation of their Consti-
16 tutional rights by impeding their efforts to associate and
17 assemble with other persons in opposition of the war in
18 Vietnam and in their opposition to racial discrimination.

19 If you find that a plaintiff has proved by a prepon-
20 derance of the evidence that, one, one or more of the
21 defendants participated in a conspiracy to disrupt or
22 discredit that plaintiff's activities -- if you find, first of
23 all, that there was a conspiracy to disrupt or to discredit
24 activities of the kind plaintiff was engaged in and that one
25 or more of the defendants participated in a conspiracy to

1 disrupt or discredit that plaintiff's activities, that one or
2 more of the conspirators committed acts in furtherance of
3 that plan, and that one or more of those acts injured that
4 plaintiff by impeding with the association or assembly of
5 other persons with that plaintiff, or vice versa, you should
6 find for that plaintiff on the issue of conspiracy -- you should
7 find for that plaintiff, and then you should proceed to
8 consider which defendant or defendants participated in the
9 conspiracy, and you should enter a verdict against that defen-
10 dant or those defendants in favor of each plaintiff who has
11 proved injury proximately caused by that conspiracy.

12 I think I can make that somewhat clearer to you
13 when I take you step by step through the verdict form.

14 In determining whether a defendant is liable to a
15 plaintiff on account of the conspiracy, it is not necessary
16 to find that a direct and immediate act of that particular
17 defendant caused the injury complained of by that plaintiff
18 so long as the act causing injury was committed by some one or
19 more of that defendant's co-conspirators, nor is it necessary
20 to find that that co-conspirator whose act directly caused the
21 injury was a defendant. The defendant must, however, have been
22 proved by a preponderance of the evidence to have been a
23 member of a conspiracy at the time the co-conspirator acted
24 to injure the plaintiff in furtherance of the conspiratorial
25 agreement with that defendant.

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1 The fact that the individual defendants were engaged
2 in law enforcement work, in particular agencies of the
3 Federal Bureau of Investigation or the Metropolitan Police
4 Department, is not standing alone proof of the participation
5 in a conspiracy, but nor does that fact preclude a conspiracy
6 between some or all of them.

7 If no plaintiff has proved any conspiracy by a
8 preponderance of the evidence, you should enter a verdict for
9 defendants on the conspiracy issue. If no plaintiff has proved
10 that a particular defendant was a member of the conspiracy at
11 the time the conspiracy injured plaintiff, you should return
12 a verdict for that defendant on the issue of conspiracy. If
13 a particular plaintiff has failed to prove that a conspiracy
14 injured that plaintiff, you may not return a verdict for that
15 plaintiff on the issue of conspiracy.

16 Now, on the verdict form there are three columns
17 about conspiracies, because there are three alleged conspiracies.
18 There is also a column about individual liability, because if
19 you go through and find that there was no conspiracy, or that
20 if there was, a particular defendant was not a member of it,
21 you may still inquire whether that defendant outside of some
22 conspiracy violated some plaintiff's First Amendment rights so
23 that that defendant injured that plaintiff.

24 So in addition to the conspiracy claims, particular
25 plaintiffs claim that individual defendants are liable to

1 individual plaintiffs because some conduct of that individual
2 defendant violated that plaintiff's First Amendment right
3 to assemble or associate so as proximately to cause injury
4 to that plaintiff.

5 If you find that no plaintiff has proved by a
6 preponderance of the evidence that the conduct of an individual
7 defendant violated any plaintiff's First Amendment right to
8 speak, assemble, petition, or associate so as to proximately
9 cause injury to any plaintiff, you should return a verdict for
10 that defendant on the issue of individual liability. If one
11 or more plaintiffs has proved by a preponderance of the
12 evidence that some conduct of an individual defendant proxi-
13 mately caused injury to one or more plaintiffs in the manner
14 stated, you should return a verdict for that plaintiff or
15 those plaintiffs against that defendant.

16 It is not necessary to find that a defendant had
17 any specific intent to deprive the particular plaintiff of
18 his or her Constitutional rights in order to find in favor of
19 the plaintiff on the issue of individual liability. The
20 plaintiffs are entitled to relief if the defendant intended
21 the actions which resulted in a violation of the plaintiff's
22 rights.

23 As I will instruct you further, however, you may
24 find the individual defendant immune from liability if within
25 the general scope of his official duties he acted -- if he

1 acted within the general scope of his official duties with a
2 reasonable and good faith belief that his conduct was lawful
3 and justified by his law enforcement responsibilities.

4 There is one particular wrinkle here by virtue of
5 the fact that one of the defendants is the District of
6 Columbia, which is not a live person, it is a corporation.
7 When an employee of the District of Columbia takes action to
8 carry out the District's laws or policies or customs, that
9 employee acts on behalf of the District of Columbia. If
10 a plaintiff proves by a preponderance of the evidence that one
11 or more of the defendants proximately caused injury to that
12 plaintiff while acting on behalf of the District of Columbia
13 in the manner I have described, the District of Columbia is
14 liable for the injuries so caused.

15 On the other hand, if a plaintiff fails to prove that
16 a District of Columbia employee proximately causing that
17 plaintiff's injury was taken in execution of the District's
18 laws, policies, or customs, the District of Columbia is not
19 liable for that employee's conduct.

20 Now, I have alluded to the issue of immunity, and
21 I want to come back to it now again. If you find that a
22 particular defendant has injured a plaintiff, or belonged to
23 a conspiracy that did so, in violation of the First Amendment,
24 you should proceed to consider whether the defendant is
25 nevertheless immune from liability for damages. The defendant,

1 as I have said before -- I'm just repeating this over and over
2 so you get it -- a defendant is entitled to immunity from
3 liability for acts performed in the regular course of duty
4 if the defendant proves by a preponderance of the evidence
5 that the defendant sincerely and reasonably believed he was
6 acting lawfully and within his sphere of official responsi-
7 bility. Proof that a defendant is entitled to immunity as to
8 one injury he has caused is not in itself a proof of
9 entitlement to immunity as to another injury that that defen-
10 dant might have caused. The defendant must prove that he
11 is entitled to immunity to a particular claim to which he
12 asserts an immunity, and he is not entitled to immunity -- or
13 he is not entitled to immunity as to that claim.

14 Remember that on immunity it's the defendant, not
15 the plaintiff, who has the burden of persuading you by a
16 preponderance of the evidence that the defendant is immune.
17 To do that the defendant must prove that the conduct for which
18 he would otherwise be held liable was in good faith actually
19 believed by that defendant to be authorized by law. The
20 defendant must also prove by a preponderance of the evidence
21 that the defendant's belief that his action was authorized
22 by law was reasonable under the circumstances.

23 In determining whether a defendant reasonably
24 believed that his conduct was lawful, you should take into
25 account the experience, training, and the rank of the employee

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1 in the police department or the FBI.

2 You are also instructed that a defendant is entitled
3 in the course of his official duties to rely on such traditional
4 sources of information as would a reasonable person under the
5 circumstances to determine whether what he was doing was
6 lawful.

7 If you find that a defendant has proved by a
8 preponderance of the evidence that his belief in the lawfulness
9 of his conduct, even though erroneous in hindsight, was in
10 good faith and was such a belief as a reasonably prudent and
11 conscientious officer might possess under the circumstances
12 that confronted that defendant, you should enter a verdict for
13 the defendant on that claim.

14 While a public officer is not charged with predicting
15 future developments in the law of the First Amendment, his
16 conduct may not be justified by ignorance or disregard of
17 settled, undisputable rules that he should have reasonably
18 so recognized at the time of his injurious conduct.

19 You are instructed that the plaintiffs' right
20 peaceably to assemble, to petition the government for redress
21 of grievances, and to associate for those purposes was clearly
22 established at all times relevant to this case.

23 Federal defendants claim that their intelligence-
24 gathering activities were required and justified in discharge
25 of their duties to maintain surveillance over foreign enemies

1 of the United States and their agents here, and with regard
2 to anticipating domestic violence. No defendant claims that
3 legitimate law enforcement duties with respect to foreign
4 agents justified the disruption or discrediting of plaintiffs
5 or the organizations with which they associated. Defendants
6 do claim that all of their activities were justified by their
7 duty to anticipate and prevent domestic violence.

8 Plaintiffs, of course, dispute the reasonableness
9 of this claim of immunity.

10 It is the law that when used in good faith,
11 investigative techniques such as physical surveillance, the
12 gathering of information about private citizens through
13 interviews, and the collection of information from informants
14 and undercover police officers are all proper police activities.
15 They violate no Constitutional rights of persons who are the
16 subjects of the government's interest.

17 However, it is also true that investigatory
18 techniques are sometimes abused by police officers and misused
19 by them to oppress citizens and groups rather than to further
20 proper law enforcement goals. Such an abuse of law enforcement
21 power may constitute an abridgement of rights guaranteed to
22 everyone by the First Amendment. For such an abuse the
23 courts provide a remedy whereby persons injured in the exercise
24 of their First Amendment rights may, if the facts so entitle
25 them, recover damages against those officials and public

1 entities that have acted improperly.

2 If you find that defendant reasonably in good
3 faith -- reasonably believed in good faith that the conduct for
4 which you may find him responsible on the claim of a particular
5 plaintiff was not of the sort that would violate that plaintiff's
6 right to assemble or associate, or that such conduct was
7 justified as a lawful exercise of his law enforcement
8 responsibilities, you should return a verdict for that defen-
9 dant on that claim of that plaintiff. If, however, you find
10 that a defendant has not proved by a preponderance of the
11 evidence that he reasonably and in good faith believed that
12 the conduct for which he would otherwise be held liable was
13 a lawful exercise of his law enforcement responsibilities,
14 that defendant is not entitled to immunity.

15 If a defendant does not prove that he or she is
16 entitled to immunity from liability for injuries done to a
17 plaintiff by a conspiracy in which that defendant participated,
18 that defendant's immunity does not affect the liability of any
19 other defendant you find to be liable on account of injuries
20 caused by the same conspiracy. Each defendant must prove his
21 or her own immunity.

22 All I have said so far applies to the individual
23 defendants and their claims of immunity from liability and
24 damages.

25 The District of Columbia, if found by you to be

1 liable for injuries to plaintiffs under the rules about which
2 I have instructed you, can never be entitled to immunity.

3 Now, the last substantive question is the statute
4 of limitations, whether the plaintiffs filed their suit
5 soon enough or filed it too late. I spoke to you during the
6 trial about this, and the lawyers have addressed it.

7 The statute of limitations is a provision of the law
8 that requires that lawsuits be commenced on certain types of
9 claims within a prescribed period of time. As to each claim
10 of injury based on the First Amendment that the plaintiffs
11 have made, a person in the District of Columbia has three
12 years from the time of injury in which to file a lawsuit based
13 upon such a claim. That three-year period has been established
14 to protect the legitimate interest of any person or organization
15 in being free of claims against them after the passage of that
16 number of years, and also to reduce the practical difficulties
17 in any court attempt to reconstruct the truth after the passage
18 of that amount of time.

19 The three-year limitation period is measured
20 backward from the day on which the plaintiff commenced the
21 lawsuit. They started this lawsuit on July 16, 1976. The
22 basic harms that plaintiffs claimed they suffered all occurred
23 before July 16, 1973, a date more than three years before
24 the commencement of the lawsuit. The fact that the basic
25 harms that the plaintiffs claim thus occurred more than three

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...enjoy a good laugh." (Barnes, NY Post). "Lee Grant infuses the evening with spontaneity." (Gussow, NY Times). "A marvel!" (LeSourd, Gannett Newspapers) "A PRIVATE VIEW is the best play to open so far this season." (Campbell, AP) "Absorbing! Political theater as fine entertainment." (Nelsen, NY Daily News) Tues/Sun-8pm. Sat & Sun mats-3pm.

LENNY AND THE HEARTBREAKERS

by Kenneth Robins / music by Scott Killian and Kim D. Sherman
Directed by Robins, Killian and Sherman
Newman Theater production that

1 years before the commencement of the lawsuit does not,
2 however, mean necessarily that a plaintiff's claim based upon
3 that harm is now barred by the three-year statute of
4 limitations.

5 A person may be harmed and know that he has been
6 hurt -- first of all, a person may be harmed and not know that
7 he has been harmed for a long time, or a person may be harmed
8 and know that he has been harmed without knowing or believing
9 that he has -- without knowing enough to establish his right
10 to recover damages for the harm.

11 A person, for example, may have no idea who
12 hurt him or what that person did to cause that injury.

13 Each plaintiff in this case alleges that the
14 defendant responsible for injuring that plaintiff concealed
15 from that plaintiff the identity of those who caused the
16 injury or the conduct that caused the injury.

17 The law provides that if such material facts as
18 are needed for intelligent prosecution of a claim were
19 deliberately concealed by the person responsible for the injury,
20 the statute of limitations does not begin to run on that
21 plaintiff's claim until the plaintiff, employing due diligence,
22 discovers or could reasonably have discovered the material
23 fact concealed from him. By "deliberate concealment" I mean
24 that the defendant or a conspiracy to which a defendant
25 belongs deliberately kept information away from a plaintiff



1 which was material to that plaintiff's claim. It is not
2 material whether the plaintiff or conspiracy kept -- it
3 doesn't make any difference whether the defendant or conspiracy
4 kept the material from the plaintiff because the agency
5 employing the defendant or the conspirators believed that law
6 enforcement considerations required concealment, or whether
7 the material facts were concealed for purposes of impeding
8 the plaintiffs' prosecution of their claim.

9 Now, material facts necessary for intelligent
10 prosecution of a lawsuit are not, of course, all the facts
11 that a plaintiff might attempt to prove at trial. A plaintiff
12 must have known -- hear this loud: A plaintiff must have
13 known enough about what happened to that plaintiff,
14 how it happened, and who caused it to happen, that a reasonable
15 person in that plaintiff's situation would have consulted a
16 lawyer in good faith for the purpose of obtaining redress in
17 court.

18 Let me say that again.

19 Let's take a five-minute recess before I finish this.
20 Excuse the jury.

21 - - -

22 Thereupon, the jury left the courtroom.

23 - - -

24 THE COURT: We will be back in five minutes.

25 - - -

1 Thereupon, a short recess was taken.

2 - - -

3 Thereupon, the following proceedings were had out
4 of the presence and hearing of the jury:

5 THE COURT: Bring back the jury.

6 - - -

7 Thereupon, the following proceedings were had in
8 the presence and hearing of the jury:

9 THE COURT: I am going to pick up where I left off
10 and say it again. I was talking about the statute of
11 limitations and the material facts that it's necessary for
12 somebody to have before they can fairly be charged with a
13 duty to have commenced a lawsuit.

14 The material facts necessary for an intelligent
15 prosecution of a lawsuit are not all the facts that the
16 plaintiff might attempt to prove in a trial. The plaintiff
17 must have known enough about what happened to him or her, and
18 how it happened, and who caused it to happen that a reasonable
19 person in that plaintiff's situation would have consulted a
20 lawyer in good faith for the purpose of obtaining redress in
21 court. Unless the plaintiff proved by a preponderance of the
22 evidence that at all times before July 16, 1973, that plaintiff
23 did not, as to a particular claim, have knowledge of the
24 material facts needed for intelligent prosecution of the case,
25 then you must find for the defendant on that claim, against
the plaintiff, and there will be a place in the form for you

1 to make that -- express that decision.

2 If it did not appear that as to a particular claim
3 one or more of the defendants responsible for the injury to the
4 plaintiff engaged in deliberate concealment, then the defen-
5 dant or defendants responsible for the injury have the burden
6 of proving by a preponderance of the evidence that the
7 plaintiff could nonetheless have discovered those facts by
8 due diligence -- using due diligence -- before July 16, 1973.

9 Due diligence is simply that attention to one's
10 own affairs in the circumstances that confront a person that
11 a reasonable person would exercise in the situation of the
12 plaintiff. Unless the defendant or defendants carry the
13 burden of proving that the plaintiff failed to exercise due
14 diligence under the circumstances which would have led that
15 plaintiff to discover the facts needed by a reasonable person
16 in that particular plaintiff's situation to have consulted a
17 lawyer for the purpose of obtaining redress in court, then
18 the statute of limitations would not have begun to run on
19 that claim until the plaintiff learned or reasonably should
20 have learned the material facts needed for that purpose. If
21 such a material fact was not learned, or if it could not
22 reasonably have been expected to have been learned until
23 July 16, 1973, then the particular claim is not barred by the
24 statute of limitations.

25 That concludes the discussion of the major substantive

1 issues: that is, whether or not the defendant was a party
2 to a conspiracy that injured a plaintiff; whether a defendant,
3 apart from the conspiracy, may have injured a plaintiff; whether,
4 even though you find that a defendant did injure a plaintiff
5 or was part of a conspiracy to injure a plaintiff, the
6 defendant was immune from liability from damages; and whether
7 the particular claim was filed too late in any event.

8 Should you find that a plaintiff has proven a
9 particular claim in the manner I have already described,
10 that a defendant responsible for the injury, either personally
11 or as part of the conspiracy, is not entitled to immunity
12 from liability and damages, and that the claim is not barred
13 by the statute of limitations, you must proceed to fix the
14 amount of damages, if any, required fairly and reasonably to
15 compensate the plaintiff for the injury suffered by that
16 plaintiff as a result of the conduct of that defendant or
17 those defendants.

18 If you find that a plaintiff is entitled to recover
19 damages for a particular injury against more than one
20 defendant, you must deliver your verdict as to that claim in
21 one single sum against all the defendants whom you find to be
22 liable for damages to compensate the plaintiff for his loss.
23 Now, the verdict form has a place here to put the amount of
24 damages.

25 If you find that a plaintiff is entitled to a

1 single sum from several defendants, you must divide this sum
2 amongst the individual defendants whom you found liable on
3 that claim so that the sum of what a defendant owes -- all the
4 defendants owe is the sum of what the plaintiff is entitled
5 to according to your finding.

6 The burden of proof is on the plaintiff to establish
7 what amount of damages, if any, the plaintiff is entitled to
8 recover.

9 The amount of your verdict for what are called
10 compensatory damages, if there be one, must be based upon the
11 evidence presented as to the plaintiff's loss of First Amendment
12 rights occasioned by the conduct of the responsible defendant
13 or defendants. Compensatory damages include the proven out-
14 of-pocket expenses, if any, of a plaintiff that were expended
15 as the proximate result of the conduct of the defendant or
16 defendants, or that were wasted as a result of that conduct.
17 Compensatory damages also include more than compensation for
18 monetary damages, however, and may include, if you find this
19 to be so, fair and reasonable amounts for proven physical pain,
20 proven mental suffering, proven humiliation, if any, that
21 reflect the duration and intensity of the injury. And even
22 if a Constitutional violation inflicts only intangible
23 injury, some compensation is still appropriate.

24 Insofar as your reward seeks to compensate intangible
25 losses for First Amendment rights, your reward must be

1 proportioned to the loss actually suffered by the plaintiff
2 and should reflect the degree, if any, to which a plaintiff's
3 conduct actually impeded the plaintiff's exercise of First
4 Amendment rights (sic). The harm sustained by a plaintiff to
5 his First Amendment rights may be established through direct
6 testimony of the plaintiffs or may be inferred by you from the
7 circumstances that the evidence has shown existed.

8 Of course, you may not award compensatory damages
9 against a particular defendant unless it is established in
10 the manner I've already described to you that that defendant
11 was responsible for the injury for which you were to award
12 damages or belonged to a conspiracy which was responsible
13 for that injury.

14 Now, if you find that the plaintiff has suffered
15 actual damages, but it is of such a nature that you can't
16 translate it into dollars, you can still award what are called
17 nominal damages; that is, some nominal sum such as one dollar.

18 If you have awarded either compensatory damages or
19 nominal damages, that is, you found there is some actual
20 injury, you can also award what I am going to describe to you
21 as punitive damages in addition to actual damages. The law
22 permits the jury under certain circumstances to award the
23 injured person punitive and exemplary damages in order to
24 punish for some extraordinary misconduct and to serve as an
25 example or warning to others not to engage in such conduct.

1 If the jury should find from a preponderance of the
2 evidence that a plaintiff is entitled to a verdict for actual
3 or compensatory damages and should further find that the act
4 or conduct of the defendant or a conspiracy to which the
5 defendant belongs which proximately caused actual injury or
6 damage to the plaintiff was maliciously or wantonly or
7 oppressively done, then you may, if in your discretion you
8 unanimously choose to do so, add to the award of actual
9 damages such amount as you unanimously agree to be proper as
10 punitive and exemplary damages.

11 An act is maliciously done if prompted or
12 accompanied by ill will, or spite, or grudge either toward
13 the individual -- the injured person individually or toward
14 all persons in one or more groups or categories of which the
15 injured person is a member.

16 An act is wantonly done if done in reckless and
17 callous disregard of or indifference to the rights of one or
18 more persons including the injured person.

19 An act is oppressively done if done in a way or
20 manner which injures, or damages, or otherwise violates the rights
21 of another person with unnecessary harshness, or severity as
22 by misuse or abuse of authority or power, or by taking advantage
23 of some weakness or disability or misfortune of another person.

24 Whether or not to make any award of punitive and
25 exemplary damages in addition to actual damages is a matter

1 exclusively within the province of the jury, if the jury
2 should unanimously find from a preponderance of the evidence
3 in this case that a defendant's act or omission, or the act
4 or omission of a conspiracy of which a defendant was a member,
5 was maliciously, or wantonly, or oppressively done. But the
6 jury should always bear in mind that such extraordinary damages
7 may be allowed only if the jury should first unanimously
8 award the plaintiff a verdict for either actual or compensatory
9 damages, and the jury should also bear in mind not only the
10 conditions under which, and the purposes for which, the law
11 permits an award of punitive and exemplary damages to be made,
12 but also the requirement of the law that the amount of such
13 extraordinary damages when awarded must be fixed with calm,
14 discretion, and sound reason, and must never be either awarded
15 or fixed in amount because of any sympathy, or bias, or preju-
16 dice with respect to any party in the case.

17 Now, as you know, the District of Columbia is a
18 municipal corporation, as I told you, and not a natural
19 person. You may award punitive damages against the District
20 of Columbia in such amount, if any, as you find to be appropriate
21 in accordance with these instructions only if both of the
22 following conditions are satisfied: One, the plaintiff seeking
23 punitive damages against the District of Columbia has proven
24 by a preponderance of the evidence that the District of
25 Columbia is liable to the plaintiff for the conduct of one or

1 more of its employees according to the instructions on the
2 District's liability I have already given to you; and two, the
3 conduct of the employee that thus creates liability in the
4 District of Columbia has been proven by a preponderance of
5 the evidence to have occurred maliciously, wantonly, or
6 oppressively, as I have defined those terms.

7 Now, ladies and gentlemen, I am going to have the
8 Marshal distribute to you sample verdict forms. Give nine of
9 them to one person, and they will pass it around.

10 Now, you will notice at the top of this it says,
11 "This is a work sheet only. Do not attempt to return a
12 verdict on this work sheet." You will have under a rubber
13 band a form for each plaintiff. You have now a sample. I
14 will let you take the samples with you so that you can do
15 your thinking using these samples, and then whoever you elect
16 as chairperson should then put down the final result on the
17 paper that has the plaintiffs' names on it. This is what should
18 be returned as your verdict. This is just to help you do your
19 work.

20 Now, I am also going to furnish you, after you get
21 into the jury room, a list of the plaintiffs with some
22 indication to remind you of who they are, and a list of each
23 group of defendants to remind you who they are. The defendants
24 are just listed here by their last name, and it occurred to me
25 that you might need to have some better neutral reminder of

1 who was who.

2 Now, it says here "Special verdict form." As I
3 say, there will be one of these for each of the plaintiffs.
4 The first question is: "Did any of the following defendants" --
5 by that, following defendants, are the names listed there in
6 the boxes -- "Did any of the following defendants injure
7 plaintiff" -- and then there will be a name -- the first name
8 is Sammie Abbott, and there will be one for each plaintiff --
9 "injure plaintiff X in the exercise of that plaintiff's
10 First Amendment rights to participate" -- "or participate in
11 one or more conspiracies that so injured plaintiff." Then
12 in the lefthand margin there is a bracket that includes five
13 names under the category "FBI," and then another bracket which
14 includes the initial names, including the District of Columbia
15 under "D.C." Now, the first column -- I suggest that you can
16 do this either way -- the first column has a life of its own,
17 and the three columns to the right all relate to conspiracy
18 problems. You may find it easier to deal with the conspiracy
19 problems, as I did in my charge, before you get to the
20 individual -- whether an individual has some liability apart
21 from being a member of a conspiracy.

22 So you will see the name -- going across the top,
23 now, there is a name of a defendant, and then there are all
24 those names.

25 The next column is "By claimed individual action,"

1 and it has a yes or a no. If you answer yes, that means that
2 you have found that the plaintiffs have proved by a prepon-
3 derance of the evidence that that defendant has injured that
4 plaintiff in respect to the plaintiff's First Amendment
5 rights. You would do that for each defendant as respects
6 that plaintiff.

7 The next column says "By claimed FBI conspiracy,
8 yes or no." Now there, before you decide that, you have to
9 decide whether you conclude that there was a conspiracy to
10 which these five defendants who were in the FBI belonged, and
11 whether that conspiracy to which they belonged injured the .
12 plaintiff in his First Amendment rights, and then whether,
13 even though there was such a conspiracy, that particular
14 defendant belonged to it. If you answer all those questions
15 yes, you write a yes after that defendants name. If you think
16 that there was no FBI conspiracy, or that this particular
17 defendant didn't belong to it, or that the conspiracy didn't
18 hurt this plaintiff, you put a no.

19 Now, notice that going across on the first line
20 there, the next column is "By claimed MPD conspiracy."
21 That is obviously the Metropolitan Police Department. Of
22 course, none of the five FBI defendants was in the MPD
23 conspiracy, so I made no provision for making any mark under
24 that column with respect to the FBI defendants. And you
25 remember, then, that there was a claim that there was a joint

1 conspiracy in which the FBI and the MPD worked together in
2 a way that hurt these plaintiffs. If you think that, and you
3 think that any of these five defendants were in it, you
4 check a yes. If you think there wasn't any such joint conspiracy
5 or, if there was and any one of these five was in it, or that
6 if there was a joint conspiracy, it didn't hurt the plaintiffs,
7 you check no under "By claimed joint conspiracy."

8 As I say, I would suggest that you do the three
9 conspiracy columns and then go back and do "By claimed
10 individual action" column.

11 At the bottom of the page you notice after the boxes
12 it says, "If your answer is no to all of the foregoing
13 questions, you should proceed no further. Your no answers
14 constitute a verdict for the defendants." In other words,
15 if nobody was in a conspiracy that hurt this particular
16 plaintiff, or if there wasn't any conspiracy that hurt this
17 particular plaintiff, or no individual hurt this particular
18 plaintiff, if he didn't have any injury, that would be reflected
19 in the columns of no answers, and for that plaintiff that
20 would be all -- you would have finished your job on that
21 plaintiff. You would have returned a verdict for that defendant
22 against the plaintiff.

23 If your answer to any of these questions is yes,
24 proceed to the next page. Now, ignore the footnote for the
25 moment, and we'll come back to that. And notice at the bottom

1 it says, "This is a worksheet only." Be sure when you get
2 through to hand in the verdicts. You don't hand in a work
3 sheet.

4 Is everybody on the second page?

5 On the second page: "Were any of the following
6 defendants immune from responsibility as found in number one
7 above?" That is, this only applies to people against whose
8 name there is a yes on page one. For those people against
9 whose name there is a yes on page one, you then consider in
10 terms of the instructions that I gave you whether that defen-
11 dant has proved to you by a preponderance of the evidence that
12 he or she was entitled to immunity, and you remember my
13 instructions about the definition and process by which you go -
14 through which you go to decide immunity.

15 Now, notice the text below the boxes: "Your
16 immune answers" -- immune, in quotes, answers -- "constitute
17 a verdict for each defendant whom you have found to be immune.
18 If you answer immune to all of the foregoing questions, you
19 should proceed no further unless you found the District of
20 Columbia liable in question number one. If you have answered
21 any of the foregoing questions in number two not immune, or
22 you found the District of Columbia liable in question one,
23 proceed to the next page."

24 Now, again, park in the side of your mind for
25 a moment the question of the District of Columbia. I'll go

1 back through this for that. In other words, if you found
2 somebody -- if somebody on this -- on page one has a yes answer
3 opposite that person's name, but on page two you find that
4 person immune, you have entered a verdict for that person
5 against the plaintiff.

6 If you answered yes on page one of that person --
7 about that person, on page two you found him not immune, then
8 you must proceed to the next page to consider whether that
9 person, even though responsible and not immune, is free of
10 liability because the plaintiff didn't bring the suit soon
11 enough.

12 So I will read it again: "Your immune answers
13 constitute a verdict for each defendant whom you have found to
14 be immune. If you have answered any of" -- I'm skipping --
15 "If you have answered any of the foregoing questions in
16 number two not immune, proceed to the next page."

17 Now, let's proceed to page 3. Page 3 says, "Was
18 the liability of any defendant about whom you answered yes in
19 question one and as to which" -- it should be maybe "whom" --
20 "you answered not immune in question two barred by the
21 statute of limitations?" And you go through here, if you
22 think that the claim against that defendant by this plaintiff
23 should have been filed sooner and is barred, you write "claims
24 barred." If you think that the plaintiffs filed the case --
25 this plaintiff filed his case against this particular defendant

1 as soon as he reasonably could, you say, "Claims not barred."

2 Again, I am going to skip 3A for a minute and go
3 down to the four lines at the bottom of the page: "Your
4 answer of 'claims barred' in the question above constitutes
5 a verdict on those claims for each defendant so identified."
6 That is, if the claim is barred, the defendant is not liable,
7 and you have entered a verdict for that defendant against
8 this plaintiff. "If you answered 'claims not barred' with
9 respect to any defendant, you should proceed to the next
10 page." Now, turn to page 4.

11 This is where you get to damages: "If, with respect
12 to claims against a defendant, you have answered yes to
13 question one, not immune to question two, and claims not
14 barred to question three, you should enter opposite the name
15 of that defendant as your verdict the amount of compensatory
16 damages, if any, you find to be required fairly and reasonably
17 to compensate plaintiff, and then his name will be in here,
18 the amount of punitive damages, if any, and/or the amount of
19 nominal damages, if any, to which you find the plaintiff will
20 be entitled." So that means when you get to this line, it
21 says -- do you see where it says "name of defendant," and
22 then "amount of compensatory damages," and then "amount of
23 nominal damages," and the "amount of punitive damages."
24 Now let me make this clear: If you award compensatory damages,
25 you don't award nominal damages. If you award nominal damages,

1 you don't award compensatory damages. Compensatory damages
2 is if you can figure out how much -- if you decided that the
3 plaintiff was hurt, but you really can't figure out any money
4 value for that hurt, you can still award that plaintiff
5 something up to a dollar in the form of nominal damages. And
6 if you award either compensatory damages or nominal damages
7 to that plaintiff, and you think that you find that the
8 evidence supports a finding for punitive damages, you add the
9 punitive damages in the third column. Then, total damages
10 as to that plaintiff would be the sum of compensatory damages,
11 or nominal damages, plus punitive damages, if any. You go
12 right down the sheet doing that.

13 Now, with respect to the District of Columbia,
14 the District of Columbia is not entitled to immunity. If
15 the District of Columbia is found by you to be responsible
16 either as an individual defendant or as a co-conspirator, it
17 is liable unless the claim against the District of Columbia
18 is barred by the statute of limitations. So at the bottom of
19 page two, first of all, you notice on page 2, there is no
20 box for the District of Columbia as such. Compare the last
21 line of the box on page 1 with the last line of the box on
22 page 2. You will see that the District of Columbia's name as
23 such does not appear in the box on page 2. That is because
24 the District of Columbia can't be immune. If it's responsible,
25 you turn then to determine whether the claim against it was

1 barred by the statute of limitations.

2 Now, on page 3, under 3A, under the box -- you see
3 that? There is a special place to determine whether the
4 claim against the District of Columbia was barred or not
5 barred. Do you see that, the boxes? Everybody that doesn't --
6 all right. Then in the damages part there is a place to say
7 that the District of Columbia -- to count the damages against
8 the District of Columbia, if you find the District of Columbia
9 liable, and if you find that there are damages.

10 Now, notice at the bottom of page 4 the footnote.
11 It says, "Note, you cannot award both compensatory and nominal
12 damages."

13 All right, now I will let you keep those work sheets,
14 and I will give you some more to work with.

15 In a moment now I am going to ask you to return to
16 the jury room to deliberate. If it becomes necessary during
17 those deliberations to send a message to me, you must do so
18 by writing a note -- first of all, you should elect somebody
19 to be the chairperson of the group. That person or any other
20 juror should write a note. There will be a Marshal right
21 outside your door, and you hand the note to the Marshal, and
22 he will bring it to me. I will either answer the note in
23 writing, or I will bring you back into the courtroom and
24 answer it verbally.

25 As I have told you before, you shouldn't try to

1 communicate with me by any process other than a note. Hand
2 it to me through the Marshal. I am not going to communicate
3 with you except in writing or orally in open court.

4 I don't have to tell you again, you don't want to
5 talk to the lawyers or anybody like that.

6 One thing about those notes: Whatever you write in
7 that note, if you should not be of a unanimous view at a
8 particular time, don't tell me what the vote is. Don't write
9 on that note, and don't tell anybody outside of the jury room
10 how you stand at a particular time on a particular matter.

11 The chairperson will, of course, preside. You
12 organize yourselves any way you want to, but the chairperson
13 will normally preside and set the agenda and work you through
14 these things.

15 You should understand, of course, that your verdict
16 has to be unanimous. If you have to continue -- if you don't
17 finish by the end of the day and want to go home and come back,
18 you can assume that you will adjourn at 5:00 o'clock, and when
19 you are ready to adjourn, you just knock on the door and tell
20 the Marshal. He will come in and tell me you are ready to
21 adjourn, and he will tell you whether I have some other idea.

22 The Marshal will take you to lunch at lunchtime.
23 Don't talk about this case except when the six of you --
24 there will be six left -- six of you are together in the jury
25 room with the door closed. If somebody has to leave the room

1 to go to some emergency, has to go to the phone, or something
2 like that, you stop talking about the case.

3 I rather you wouldn't have newspapers in the jury
4 room. I notice there is one now. If the Marshal is around,
5 I will ask him to go get it. Which leads me to one other
6 thing: Did any of you -- I forgot to ask you when you came in.
7 I will ask you now. If anyone saw anything in the paper, or
8 heard anything on the radio, or saw anything on television
9 about this case, I would like that person to step forward to
10 the bench. I take it by your silence and seated position that
11 the answer to my question is no.

12 If you will just wait there for a moment, I will
13 ask counsel to come to the bench.

14 - - -

15 Thereupon, the following proceedings were had at
16 the bench:

17 THE COURT: Go ahead.

18 MR. WHITE: Your Honor --

19 THE COURT: Let the plaintiffs go first.

20 MS. PILSBURY: At one point, Your Honor, you misread
21 one of the instructions and said the plaintiff instead of the
22 defendant.

23 THE COURT: Which one was it?

24 MS. PILSBURY: It was in the damages instruction --

25 THE COURT: Why don't we excuse the jury for just a

1 moment.

2

- - -

3

Thereupon, the following proceedings were had in
4 the presence and hearing of the jury:

5

THE COURT: We will excuse you for a moment. Don't
6 deliberate yet.

7

- - -

8

Thereupon, the jury left the courtroom.

9

- - -

10

Thereupon, the following proceedings were had at
11 the bench:

12

MS. PILSBURY: On page 2, Your Honor, of the damages
13 instruction, approximately in the middle of the page.

14

THE COURT: Page 2?

15

MS. PILSBURY: Second page, the sentence that
16 starts "insofar." When you got down to the phrase that
17 says, "and should reflect the degree to which a defendant's
18 conduct," you read "plaintiff's." I am bringing that to the
19 Court's attention.

20

THE COURT: Do you feel it is worth bringing up?

21

MS. PILSBURY: No. I wanted to make the Court aware.

22

THE COURT: Sure.

23

MS. PILSBURY: We have a very strong objection to
24 the statement that was made that if you find it difficult to
25 place a dollar figure, you should award nominal damages. We

1 feel that is a misstatement of the law. The fact that it is
2 difficult to translate the money into dollars does not mean
3 that they should award nominal damages if they feel that
4 plaintiffs were substantially injured. I would ask that they
5 be instructed to that effect and be told that nominal damages
6 would be appropriate if you feel the violation is merely a
7 technical one. I believe the Court twice told them that if it
8 is hard to place a dollar figure, you should give nominal
9 damages.

10 THE COURT: I think your point is well taken. Just
11 a moment, I like what you said.

12 You don't?

13 MS. BONN: That was my thought.

14 THE COURT: Do you want to argue about that?

15 MS. BONN: Yes, only to the point -- I would agree
16 with counsel with respect to the characterization of nominal
17 damages, but I don't think it only need be a technical violation
18 to award nominal damages. I think nominal damages can be
19 awarded for more than just a technical violation. I would
20 object to the word "technical" being used, but I don't have
21 a problem with the rest of the phrasing.

22 THE COURT: Let me try this on you: I am stuck in
23 saying that actual damages need not be awarded if it is
24 difficult to calculate damages. It is more correct to say
25 that you award nominal damages and not compensatory damages if

1 the injury has no substantial value.

2 MS. PILSBURY: I would ask that they be reminded
3 then that just because there was no out-of-pocket impact,
4 they can still award compensatory damages.

5 THE COURT: Right, right, okay.

6 As I told you, you can award compensatory damages
7 even if the plaintiff was not literally out of pocket.

8 MS. PILSBURY: Fine.

9 THE COURT: Maybe I can read that again. I think
10 I will read again the paragraph that begins at the bottom of
11 page 1, "All the rest of compensatory damages."

12 MS. PILSBURY: Is this in the damages instruction?

13 THE COURT: Yes.

14 MS. PILSBURY: In reference to that, you stopped
15 short on your reading of the damage instruction after you
16 finished the insert involving the District of Columbia. You
17 didn't complete the draft instruction. I don't know whether
18 that was intentional.

19 THE COURT: I thought I said the same thing over and
20 over again when I was showing them the form. What did I
21 leave out?

22 MS. PILSBURY: What you left out is at the point
23 that you stopped. The instruction had told them that they can
24 award either actual or compensatory damages. You hadn't
25 talked about nominal damages.

1 THE COURT: I did, though.

2 MS. PILSBURY: Not at this point in the instruction.
3 They need to be told that they can award punitive damages
4 based on nominal damages.

5 THE COURT: I said that over and over again.

6 MS. BONN: You said that.

7 THE COURT: It is in the footnote to the form. I
8 know I should do that, but I represent that I have.

9 MS. PILSBURY: Okay.

10 THE COURT: Is that it?

11 MR. WHITE: Your Honor?

12 THE COURT: Yes, Mr. White?

13 MR. WHITE: In addition to renewing the objections
14 we made previously in regard to the statute of limitations
15 instruction, we believe we are entitled to an instruction
16 that silence is not concealment within the meaning of
17 fraudulent --

18 THE COURT: Did you request that?

19 MR. WHITE: It was in our form previously submitted.

20 THE COURT: Well, that is a refinement and is not
21 necessary.

22 MR. WHITE: In addition, with regard to the same
23 instruction, we would simply object to the language that
24 concealment for law enforcement purposes may be considered as
25 deliberate concealment. We believe that is an incorrect

July Instr.
Pitz object to
failure to give
that "normal"
instruction

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1 statement.

2 THE COURT: Yes?

3 MS. BONN: We would adopt that.

4 THE COURT: Otherwise you are all right?

5 MS. BONN: Yes.

6 MS. PILSBURY: I have one more --

7 MR. SCHEMBER: On this point are you accepting what
8 the defendants are saying and changing the instruction
9 regarding concealment --

10 THE COURT: No, no, no.

11 MS. PILSBURY: I also want to note -- I guess at
12 this point for the record that my request that they be
13 instructed that actual malice precludes immunity has not
14 survived into these instructions.

15 THE COURT: Yes?

16 MR. WHITE: There is an additional matter in light
17 of the discussion yesterday regarding attempted contact with
18 the alternate juror. I want to inquire whether the attempt
19 or actual inquiry has been made of the former juror, Evelyn
20 Sidransky?

21 MS. PILSBURY: Yes, there was.

22 THE COURT: I want that on the record.

23 MS. PILSBURY: We talked to her the day before
24 yesterday. I didn't talk to her, someone else did.

25 THE COURT: Before I had this hearing yesterday? You

1 will have to relate what was relayed.

2 MS. PILSBURY: This will be thirdhand hearsay.

3 THE COURT: Whatever it is, that is the best I have
4 got right now.

5 MS. PILSBURY: She --

6 THE COURT: Let's start the jury deliberating.
7 We can always have a mistrial later. I noticed when I called
8 a recess, juror number 5 was snoozing.

9 MS. PILSBURY: It happened during closing argument.

10 THE COURT: My question is does anybody have a
11 motion to excuse that juror and reseal alternate number 1?

12 MS. BONN: I would make that. He has snoozed almost
13 continuously throughout the entire trial.

14 THE COURT: Any opposition?

15 MS. PILSBURY: Could we have a moment to check with
16 our notes?

17 THE COURT: Sure. Let them do that while you deal
18 with me.

19 MS. BONN: Your Honor, it dealt with the way the
20 documents are going to be marked. A lot of these documents
21 came in only against the Federal defendants.

22 THE COURT: Is this something I have to tell the
23 jury?

24 MS. BONN: I was asking if there was any way to
25 facilitate this?

1 THE COURT: I said do you want to talk about some
2 way of organizing the documents after they started. I want
3 to get them deliberating. It will take us a while for the
4 Clerk to get these documents together, and if you have some
5 suggestion about the form in which they ought to go in, I
6 will be glad to consider that.

7 MS. BONN: Thank you.

8 THE COURT: I don't want to hold up the deliberations.

9 MS. PILSBURY: Could I have a minute to look at
10 my notes?

11 THE COURT: Sure.

12 - - -

13 Thereupon, the following proceedings were had in
14 open court, out of the presence and hearing of the jury:

15 MS. PILSBURY: Your Honor, I have no objection.

16 THE COURT: Very well. I will direct the Clerk
17 when I excuse alternate 5, and then you will seat -- I will
18 excuse juror number 5, and you will seat alternate number 1 as
19 juror number 5, and then I will excuse the alternate. But
20 I will excuse the juror, and then the Clerk will direct the
21 seating of alternate 1 as juror number 5.

22 Bring back the jury.

23 - - -

24 Thereupon, the following proceedings were had in
25 the presence and hearing of the jury:

1 THE COURT: Would juror number 5 please come to the
2 podium?

3 - - -

4 Thereupon, an off-the-record discussion was had.

5 - - -

6 THE CLERK: Walter Morton, please take juror seat
7 number 5.

8 - - -

9 Thereupon, the following proceedings were had in
10 open court:

11 THE COURT: Would the six jurors now follow the
12 Marshal to the jury room to begin your deliberations, and the
13 three remaining alternates remain in the box.

14 MS. BONN: Your Honor, can we approach the bench,
15 please?

16 THE COURT: What for?

17 The three alternates are excused. Thank you very
18 much, ladies and gentlemen.

19 - - -

20 Thereupon, the alternates left the courtroom.

21 - - -

22 THE COURT: There is one matter about which I want
23 to make a correction in my instructions. It relates to actual
24 damages or compensatory damages as distinguished from nominal
25 damages. I mistakenly gave you the impression that actual

1 damages need not be awarded if it's difficult to calculate
2 damages. That's not right. It is more correct to say that
3 you award nominal damages and not compensatory damages if the
4 plaintiff has proved by a preponderance of the evidence that
5 he or she was injured, but you find that the injury has no
6 substantial value. If it's got substantial value, you have to
7 put a value on it and award compensatory damages.

8 You should also bear in mind that in order to award
9 compensatory damages, it is not necessary to find that the
10 plaintiff is actually out of pocket a certain amount of expense.
11 There are other kinds of injury which would entitle a plaintiff
12 to compensatory damages.

13 Since I didn't get it just right the first time,
14 I am going to read to you that paragraph on the measure of
15 damages: "The burden of proof is on the plaintiff to establish
16 what amount of damages the plaintiff is entitled to recover as
17 compensation for that plaintiff's loss. The amount of your
18 verdict for compensatory damages, if there be one, must be
19 based upon the evidence presented as to a plaintiff's loss of
20 First Amendment rights occasioned by the conduct of the
21 responsible defendant or defendants. Compensatory damages do,
22 of course, embrace the proven out-of-pocket expenses, if any,
23 of a plaintiff that were expended as a proximate result of
24 the conduct of the responsible defendant, or that were wasted
25 as a result of that conduct. Compensatory damages also

1 embrace more than recompense for monetary damages and may
2 include fair and reasonable amounts for proven physical pain,
3 proven mental suffering, and proven humiliation, if any, so
4 long as the amount of the damages reflects the duration and
5 intensity of the injury that you find. And even if a
6 Constitutional violation inflicts only intangible injury,
7 compensation, compensatory damages, are still appropriate.

8 "Insofar as your award seeks to compensate intangible
9 losses of First Amendment rights, it, your award, must be
10 proportioned to the loss actually suffered by a plaintiff and
11 should reflect the degree to which a defendant's conduct
12 actually impeded the plaintiff's exercise of First Amendment
13 rights. The harm sustained by a plaintiff to his or her
14 First Amendment rights may be established through direct
15 testimony of the plaintiffs or may be inferred from the circum-
16 stances that the evidence has shown to have existed.

17 "Of course, you may not award compensatory damages
18 against a particular defendant unless it is established in
19 the manner that I have described to you that that defendant
20 was responsible for the injury for which you would award
21 damages, or that that defendant belonged to a conspiracy which
22 was responsible for that injury."

23 All right, now, ladies and gentlemen, the Marshal
24 will escort you to the jury room. In a few minutes, he will
25 take you to lunch. When you come back from lunch, you again

1 resume deliberations without waiting to come back into the
2 courtroom. If you have not reached a verdict by 5:00 o'clock,
3 send a message to the Marshal that you want to go home. If
4 you don't want to go and want to continue to deliberate,
5 send me a message to that effect. That is all.

6 - - -

7 Thereupon, the jury left the courtroom.

8 - - -

9 Thereupon, the following proceedings were had out
10 of the presence and hearing of the jury:

11 THE COURT: Now, as to exhibits, I would like you
12 all to -- it will take some time to agree, and clear with the
13 Clerk, and record on her list of the exhibits by your initials
14 your agreement and understanding as to what exhibits are going
15 to the jury, and if there is any dispute about it, I will be
16 available to resolve it.

17 Any problem that you anticipate going in that I can
18 deal with now, or you want to try and see what you can do?

19 MS. BONN: I don't anticipate it being a problem,
20 but maybe there is. The Court may have --

21 THE COURT: You had some idea about identification
22 of exhibits that related to some defendants and not others.

23 MS. BONN: Yes, Your Honor. I wondered if there was
24 any method whereas all the exhibits that were solely admitted
25 against the Federal defendants could be marked as such.

1 THE COURT: You might want to get the Marshal to
2 get you a couple more dollies, and have a D.C. dolly and
3 FBI dolly.

4 MS. PILSBURY: Your Honor, if I may, I don't recall
5 ever hearing the motion that the documents that we were
6 introducing were being admitted only against the FBI defendants.

7 MR. BARCLAY: I recall making such a motion --

8 THE COURT: Well, I gave instructions, and I think
9 it would be helpful. We have talked about two overlapping
10 circles. If you can design a way to segregate -- well,
11 why don't we do it this way: Why don't you put on one dolly
12 the documents that originated on discovery -- that were
13 discovered from the Federal defendants, and another dolly, a
14 pile of the documents that were developed from discovery
15 against the District of Columbia defendants.

16 MS. BONN: Your Honor, just so the record will be
17 clear, a motion was made by Mr. Barclay to have --

18 THE COURT: It is a little late --

19 MS. BONN: No, it was made, and it was, in fact,
20 ruled upon that the exhibits would, in fact, be introduced
21 into evidence solely against the Federal defendants, and I
22 can't understand why counsel can't remember that, but I
23 would agree with the Court, if --

24 THE COURT: That's not the first failure of memory
25 we have had, including myself.

1 MS. BONN: I understand.

2 THE COURT: So you all try to put together two
3 piles, and I will look at it, if you want to put them on one
4 table or another table, and if there is some problem about it,
5 I will come out and resolve it.

6 MS. BONN: With respect to the other issue raised at
7 bar --

8 THE COURT: What other issue?

9 MS. BONN: The issue that was raised at bar by
10 counsels.

11 THE COURT: I will hear you on that now.

12 MS. BONN: Shall we approach bar?

13 THE COURT: At the bench, yes.

14 - - -

15 Thereupon, the following proceedings were had at
16 the bench:

17 THE COURT: I think I have to have that juror in.

18 MS. PILSBURY: I can indicate on the record --

19 THE COURT: Go ahead, but I still have to have
20 the juror in.

21 MS. PILSBURY: We attempted to contact her about
22 three days ago.

23 THE COURT: Who?

24 MS. PILSBURY: I had somebody call.

25 THE COURT: Who is the somebody?

1 MS. PILSBURY: Mary Pike. She talked to her and
2 asked her first to be sure not to discuss the conversations
3 with any of the other jurors, and determined that she wasn't
4 in contact with any of the other jurors, and asked her if
5 she would be willing to give us her impressions of the trial
6 up to the point that she left the jury, and, you know, she
7 said that she would.

8 THE COURT: And she said -- what were her impressions?

9 MS. PILSBURY: Her impressions were that basically --
10 let's see. The first thing that I was told that she said
11 was that some of the jurors had a bit of a concern about the
12 FBI because they were federal employees, and the other thing
13 that she said was that it seemed that some of the things
14 that happened to the plaintiffs were minor, and some of them
15 seemed more serious, and basically those were the only
16 substantive things that she said. She talked about how
17 much she wanted to be on the jury and how badly that she
18 felt that she was late that day. It was about a three to
19 four-minute conversation.

20 THE COURT: All right. I will have to have Miss
21 Pike and that juror in here, and I will ask the Clerk to
22 arrange to call her at a convenient time today, if possible.
23 I don't know where she works or anything.

24 MS. PILSBURY: She is a housewife, Your Honor. I
25 can't produce Mary Pike. She has gone back to New York.

1 THE COURT: You will produce her.

2 MS. PILSBURY: Today?

3 THE COURT: Not today. I want her as soon as
4 possible.

5 MS. PILSBURY: She was acting as my agent.

6 THE COURT: I understand that. I have to make a
7 record, that is all. I am not acting on this at this time.
8 I am making a record while it is fresh.

9 MS. PILSBURY: Could I just ask this? Could you
10 first interview Mrs. Sidransky?

11 THE COURT: I don't have to have Miss Pike today,
12 but I have to have her while this thing is going on so
13 these people can make a motion with a full record. I am
14 disappointed this didn't come out yesterday when I raised
15 the first thing.

16 MS. PILSBURY: I apologize, Your honor. If we
17 hadn't been so rushed, and I wasn't in the middle of my
18 closing argument, I would have gone into the whole thing.

19 THE COURT: I understand that. Apologies aren't
20 the concern. It is a question of mistrial, and I am trying
21 to get the record straight. You tell me after you talk to
22 Miss Pike when she can get down here in time to enable these
23 people to make a motion.

24 MS. PILSBURY: Could they decide whether they need
25 to have Mary Pike come down?

1 THE COURT: I have an interest in it. Whether they
2 have an interest in it or not is just part of it. I will
3 have Miss Pike down here -- have her down here at an early
4 opportunity while this case is still going on. I will hear
5 from you at 5:00 o'clock when the jury is excused. I would
6 appreciate it if you would be in the courthouse, and leave
7 my Clerk, courtroom Clerk, and my secretary word of where
8 you can be reached on short notice.

9 MS. BONN: May we go back to our offices if that
10 number --

11 THE COURT: Where is your office?

12 MS. BONN: At the District Building on 14th and
13 E Street.

14 THE COURT: Why don't you stay around here this
15 afternoon? You will have to be settling these exhibits.
16 I am sure the U.S. Attorney will make room for you, and you
17 can be comfortable in the lawyers' lounge and leave work
18 exactly where you are. After lunch be here. You will work
19 on these exhibits with the Clerk, and I want to have an
20 initialed document when you are through.

21 - - -

22 Thereupon, the Court recessed for lunch.

23 - - -

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, ET AL., :
Plaintiffs, :
v. : CA No. 76-1326
JERRY WILSON, ET AL., : VOLUME V
Defendants. :

Washington, D. C.
Friday, December 18, 1981

The above-entitled matter came on for trial before
the HONORABLE LOUIS OBERDORFER, United States District Court
Judge, in Courtroom No. 3.

APPEARANCES:

ON BEHALF OF THE PLAINTIFFS:

Mr. Daniel M. Schember, Esq.
Ms. J.E. McNeil, Esq.
Ms. Anne Pilsbury, Esq.

ON BEHALF OF THE FEDERAL DEFENDANTS:

Mr. David White, Esq.
Mr. Dennis F. Hoffman, Esq.

ON BEHALF OF THE DISTRICT OF COLUMBIA DEFENDANTS:

Ms. Laura Bonn, Esq.
Mr. George Barclay, Esq.

Official Reporter: Bruce W. Herzfeld

P R O C E E D I N G S

1
2 Thereupon, the following proceedings were had out
3 of the presence and hearing of the jury:

4 THE CLERK: The case of Hobson versus Wilson.

5 THE COURT: Good morning, Ms. Pilsbury.

6 I haven't heard anything more from the jury, and I
7 think what I'd like, if this is feasible, if somebody,
8 some one lawyer from the plaintiff, could remain around, and
9 some one lawyer from the four of you who have been here for
10 the defendant can remain around just so I can get some routine --
11 so if I get a routine matter from the jury that really
12 doesn't require anything except nominal presence or is
13 something that a representative of the group could call back
14 and get a consensus on quickly. I would suggest that you all
15 divide the watch, and you have some colleagues that you could
16 rotate down here. But it does inconvenience me to have to
17 wait in this bad weather, and the telephones may go bad,
18 to find somebody and keep the jury idling when they might
19 be in the middle of some process that is interrupted while
20 we wait for lawyers to answer a simple question or a hard
21 question. Let's do that that way.

22 Now, Miss Pilsbury, I see that Miss Pike is here.
23 I will be glad to have her statement just as a lawyer, if
24 you will come to the podium.

25 MS. PILSBURY: Fine, Your Honor.

1 THE COURT: Good morning, Miss Pike.

2 MISS PIKE: Good morning, Your Honor. Let me
3 state my name is Mary Pike, and I am a member of the bar of
4 the state of New York.

5 THE COURT: And you were admitted on a motion here
6 at the counsel table.

7 MS. PIKE: That is correct, Your Honor, on
8 December 15.

9 THE COURT: I have been advised by Miss Pilsbury as
10 to the concern that Your Honor has, and consequently I
11 returned immediately.

12 THE COURT: I appreciate it.

13 MISS PIKE: It's my pleasure, Your Honor. I felt
14 that I could do no less.

15 On December 14, after all parties in the case had
16 rested, I telephoned Mrs. Evelyn Sidransky at approximately
17 4:50 p.m. that afternoon. I identified myself to Mrs.
18 Sidransky as an attorney. I indicated that I was calling
19 for the plaintiffs in the case in which she had been a juror.
20 My first remark to her was that I understood that Your Honor
21 had said that he would prefer that she would not discuss the
22 matter, that I wanted her to be completely comfortable with
23 the fact that she did not have to speak with me, and if she
24 had any reservation whatsoever, she should not.

25 She did not ask any questions, and she began to

1 speak with me, and I took down, as we talked, each of the
2 points that she made. I can try to simply recount them from
3 memory if Your Honor does not mind. I will refer to my
4 notes to --

5 THE COURT: Any way you want to communicate.

6 MISS PIKE: The first point Mrs. Sidransky made was
7 that there was so much material that it was hard to keep the
8 facts straight.

9 Her second point was that initially the judges --
10 I'm sorry, the jurors were a little -- I can't remember her
11 exact word -- amused because it seemed that the judge was
12 having to spend a great deal of time educating the lawyers,
13 but she acknowledged, however, that that got better quickly.

14 She stated that she found the plaintiffs were
15 articulate and that they did a good job in presenting their
16 case, and what happened came across well.

17 Mrs. Sidransky then said that she really wanted
18 to be on the jury. She was very distressed with herself
19 for the circumstances that caused her to be late, and then
20 went into some detail about what those circumstances were.

21 Back to the substantive comments. She indicated
22 that there was some confusion because the plaintiffs appeared
23 to be able to still accomplish the goals that they had set
24 out. She added then that there was too much material, and
25 because of that, one couldn't tell what was minor, and

1 one couldn't tell what was major in the case.

2 She indicated that she could not understand the
3 significance of the Rational Observer incident at American
4 University, that it seemed to be just a nuisance.

5 She understood, or thought, that it was a major
6 point that the FBI was involved in sending false signals to
7 marshals during certain demonstrations.

8 She was not convinced that the defendants did
9 manage to incite the police against, quote, "the peace
10 people," unquote.

11 She said that the jury seemed to be having some
12 difficulty in keeping things in their head because there was
13 so much material. This was a point that she made several
14 times.

15 She said that the statute of limitations questions
16 seemed very difficult. She indicated that the jurors did not
17 talk about the case at all, that they got along fine together.
18 She said that there appeared to be a bit of a fear that
19 these were people with government jobs, and there was perhaps
20 some worry about going against the FBI.

21 I would simply like -- those are my notes, Your Honor,
22 which were taken verbatim. May I simply add that there
23 were three points that I did not take down -- to my knowledge
24 only three points that Mrs. Sidransky made. For the sake of
25 your record, I would like to state those, if I may.

1 THE COURT: Please.

2 MISS PIKE: Actually one of them was mine. At the
3 conclusion of the conversation, Your Honor, in an abundance
4 of caution, I told Mrs. Sidransky that certainly under no
5 circumstances, having been discharged, should she communicate
6 with any juror still sitting in the case. She indicated that
7 she would not, had not, and that the thought never crossed
8 her mind.

9 The two points she made that I didn't take down were
10 simply that she did not really recall the last witness that
11 she saw. It was some FBI agent, and she did not remember
12 which one. Finally, she feels that the reason for her
13 lateness was that she had been feeling somewhat ill the
14 night before, had a fever, and felt perhaps that she wasn't
15 paying as close attention, had not been feeling as well as
16 she would have liked to.

17 That, Your Honor, to the best of my recollection
18 and my notes, is the entire substance of it.

19 THE COURT: If either counsel for the Government
20 or Miss Pilsbury wishes to address any questions to Miss Pike
21 through me, I will be glad to entertain them.

22 MS. BONN: May we beg the Court's indulgence for
23 one moment?

24 THE COURT: Certainly.

25 MR. WHITE: Your Honor, there are a few issues that

1 are on my mind. I'm not sure I have any particular questions --

2 THE COURT: All I want to do is to make a record.
3 I don't want to have an argument on this matter. If you
4 have some question of fact that you would like answered by
5 Miss Pike, I will hear it. I won't take the argument now
6 because I have nothing before me.

7 MR. WHITE: Yes, Your Honor.

8 I think what I would like to know is the connection
9 between the call and the plaintiff's case; that is, whether
10 Miss Pike was acting under the instructions with the knowledge
11 and under the direction of the trial counsel on the case and --

12 THE COURT: I will assume that unless they tell me
13 differently. We have learned a lot about conspiracy, as I
14 said the other day. I will assume that all plaintiffs'
15 counsel are responsible for whatever happened, including the
16 plaintiffs.

17 MR. WHITE: The other question, Your Honor, I
18 think would be how the information was relayed to Miss
19 Pilsbury and the way in which it was utilized for preparation
20 of their closing argument. That is a difficult kind of question
21 to articulate because that is a concern that we have.

22 THE COURT: Well, that's going to get us into
23 the delicacies that are not of concern to me now. I don't
24 want to intrude into the communications between counsel. The
25 only communications that I am now putting on the record are

1 the communications between counsel and a juror.

2 MR. WHITE: Finally, Your Honor, in light of the
3 way that this issue has come to our attention, I feel that it
4 is necessary for me to place the question before the Court
5 as to whether they made any effort or any actual contact
6 with any member of the jury.

7 THE COURT: Well, I think I have a representation.
8 I don't have any basis for believing that they did. I
9 assume now that they -- let me just ask Miss Pilsbury --
10 this is all the contacts --

11 MS. PILSBURY: Absolutely. We would never make
12 any attempt to contact in any way directly or indirectly
13 any juror in this case.

14 THE COURT: Thank you.

15 That completes your questions?

16 MR. WHITE: That completes those questions, Your
17 Honor. At the appropriate time, if this is it, I would
18 move for a mistrial on the basis of what has occurred.

19 THE COURT: I will hold that under advisement.

20 While we are asking questions about contacts with
21 jurors, and this may just be -- I may have become over-
22 sensitive to this -- yesterday when I mentioned the fact
23 that Mr. Watson was the foreman, it appeared to me to animate
24 your colleagues to a degree that I thought unusual, and I
25 don't know whether it was just because you all had been

1 betting on who would be the foreman or whether you knew
2 more about the venire than a citizen would that doesn't have
3 the facility that the FBI or Metropolitan Police do.

4 MR. WHITE: Well, Your Honor, I can assure our
5 amusement was a result of our attempts to guess who the
6 foreman would be, and we thought it rather interesting that
7 the last person to take the front row would be the foreman.
8 I think it was probably a bit of a surprise to him.

9 THE COURT: Is there any practice on the part of
10 the police department or the FBI to make any special inquiry
11 about a venire?

12 MR. WHITE: If there is, Your Honor, I am totally
13 unaware of it. I would not approve of it.

14 THE COURT: Okay, thank you.

15 MS. BONN: We were simply surprised at the choice
16 for a foreman.

17 THE COURT: Very good.

18 The motion for mistrial is under advisement, obviously,
19 and if it is renewed at the end of the proceedings, I will,
20 of course, hear argument on it, and at that time we will have --
21 if we get to that and we have to have an inquiry as to whether
22 and to what extent any prejudice resulted, if there was some
23 impropriety.

24 MS. BONN: Can we state our position on the record
25 with respect to the motion?

1 THE COURT: I would rather not argue it. You are
2 joining in the motion?

3 MS. BONN: Not exactly, Your Honor. Your Honor, we
4 do not oppose the motion for the mistrial, but we are not
5 making a motion for mistrial.

6 THE COURT: So if there were a mistrial, it would
7 be only as to the Federal defendants?

8 MS. BONN: No, Your Honor, at that point we would
9 ask to be -- a mistrial as to one defendant and all
10 defendants, and we would join in at that time. Our position,
11 I guess, right now is we're just not moving for the mistrial
12 at this point, but we are not opposing a mistrial. If the
13 Court is inclined to grant a mistrial, we would then ask for
14 a mistrial for all defendants.

15 THE COURT: I'm not going to rule on the motion
16 until we've heard from the jury. I'm not going to even hear
17 the motion until we have heard from the jury. It's here, it's
18 right -- the right to move is preserved. If you want to make
19 another motion later, you, of course, can.

20 MS. BONN: I just wanted our position on the record,
21 and our position would be that if there was a mistrial
22 granted, we would want it granted for all the defendants in
23 this case.

24 MS. PILSBURY: Your Honor, in view of the fact that
25 the motion is under advisement, I just want to make clear

1 that Miss Pike is free to go back to New York --

2 THE COURT: Yes, indeed.

3 MS. PILSBURY: -- and that there is no further
4 information that the Court or either counsel wish to get from
5 her.

6 THE COURT: Well, if we have a hearing on a
7 motion for a mistrial, I will do it in an orderly way, and
8 there will be no rush to judgment on it. You will have an
9 opportunity to have discovery on each side, and then we will
10 have a hearing.

11 MS. PILSBURY: Fine, thank you.

12 MR. WHITE: Your Honor, yesterday when we were
13 discussing this, there was some indication that you desired
14 to have Mrs. Sidransky appear in court --

15 THE COURT: Yes, I do. Thank you, Mr. White. I
16 would like you to ask the Clerk to arrange some time for her
17 to come down either today or -- if it could be today, that
18 would be well, and then whoever your person in place is
19 could alert you to come on back, and we will examine her.

20 MR. WHITE: Thank you, Your Honor.

21 THE COURT: Thank you for reminding me.

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25

FRIDAY AFTERNOON SESSION

December 18, 1981

P R O C E E D I N G S

Thereupon, the following proceedings were had in chambers:

THE COURT: Mrs. Sidransky, it came to my attention yesterday that there had been a conversation between yourself and one of the counsel for the plaintiff. I hate to disturb you and bring you down here. It is a matter of importance to us and to me to know as best I can, while it is fresh in everybody's mind, what was said so if we need to get further into it, we can. Just tell me when it was and who --

MS. SIDRANSKY: I was awakened, I think, on Monday at 5:00 o'clock. I had an illness I just recovered from. I really was not very sharp. After I said it, I realized I should not.

She identified herself as being a friend of Anne Pillsbury and asked me my general impression of the case.

THE COURT: She said that she was a friend?

MS. SIDRANSKY: Yes. Since it was in the newspaper already, and it was public knowledge, that was the introduction. All I really said was that I thought that it was hard to differentiate between what was important and what was not important. Everything was handled on the same level.

THE COURT: Excuse me just a minute. You were sworn

1 when you were a juror, and I will assume that you are
2 speaking under oath.

3 MS. SIDRANSKY: Right, yes.

4 Everything was hard to determine the important
5 events -- as I recall -- from the unimportant events.

6 THE COURT: What precisely were you asked?

7 MS. SIDRANSKY: General impressions of the case in
8 terms of how I felt it was presented and whether the arguments
9 were coherent, and my impression was it was difficult to
10 distinguish between what was important and what was not
11 important. Everything was handled on the same level. I
12 think that is pretty much what I said. I don't remember
13 anything else precisely -- generally she asked me how -- just
14 generally if the jury got along. There was no discussion while
15 I was on the jury -- absolutely none, I can testify.

16 THE COURT: I am only interested in what you told
17 her.

18 MS. SIDRANSKY: Okay.

19 THE COURT: You told her --

20 MS. SIDRANSKY: It was difficult to differentiate
21 the unimportant things and important things. Everything was
22 handled at the same level. A lot of things I thought were
23 unimportant they were giving too much weight, and the
24 important things got lost in the shuffle.

25 THE COURT: Is there anything else about the

1 conversation that you recall?

2 MS. SIDRANSKY: Not really.

3 THE COURT: Do you remember how it ended?

4 MS. SIDRANSKY: She thanked me, and I said I didn't
5 think that I was very -- you know, the idea was not to get
6 information from me, I think it was just a general impression.

7 When I hung up, I realized that probably even that --
8 but -- I have been so depressed since I was thrown off, and
9 a guilt trip, and this is very terrible. I have been very
10 depressed.

11 THE COURT: I am sorry about that because I
12 appreciated your service to the time that you were able to
13 render it.

14 Does either counsel wish to inquire?

15 MS. PILSBURY: I have no questions. I would like
16 to apologize to Mrs. Sidransky for the inconvenience by our
17 misunderstanding about the propriety of this.

18 THE COURT: Sure.

19 MS. BONN: May I speak with Mr. White a second?

20 THE COURT: Certainly.

21 MS. PILSBURY: I would like to ask her a question.

22 THE COURT: Wait and let them get back into the game.

23 MS. BONN: Mr. White will begin.

24 THE COURT: Go ahead.

25 MS. PILSBURY: Do you remember the name of the

1 woman who called you? She identified herself as calling for
2 me.

3 MS. SIDRANSKY: Yes. I don't remember her name.
4 I was asleep, and I didn't listen.

5 MS. PILSBURY: Do you recall if she told you
6 specifically if she was calling for the plaintiffs' lawyer
7 or something that identified her as being with the plaintiffs?

8 MS. SIDRANSKY: No, she just said that she was a
9 friend of yours.

10 MS. PILSBURY: Do you remember if she said that she
11 was an attorney?

12 MS. SIDRANSKY: No.

13 THE COURT: Mr. White?

14 MR. WHITE: Ms. Sidransky, I am David White, and I
15 represent the five FBI agents here.

16 Regarding the conversation, was there anything said
17 by the person who called you relating to any understanding
18 that she had about whether you had been instructed not to talk,
19 or whether she believed --

20 MS. SIDRANSKY: She believed, because I think it
21 was in the newspaper, and because I was excused from the case,
22 it was all right. I don't think that she thought it was
23 wrong to ask --

24 THE COURT: I think his question is what she said,
25 not what you thought --

1 MS. SIDRANSKY She introduced herself by saying that
2 the case is in conclusion, and there has been a lot of publicity
3 in the press about it now, and I feel I can ask you about it.

4 MR. WHITE: Did she say anything to the effect that
5 you did not have to talk to her? Specifically did she say
6 something to the effect "We understand that you have been told
7 that you are not to discuss this case" --

8 MS. SIDRANSKY: No, if she reminded me, I probably
9 wouldn't have. All she said was "I don't want to trouble you,"
10 or something like that.

11 MR. WHITE: Now, during the course of the conversation
12 or at its conclusion, did she ever ask that you not tell
13 anybody --

14 MS. SIDRANSKY: No, but she reminded me I should
15 not have any contact with the jury, and, of course, I have
16 not. That was the only thing that she told me.

17 MR. WHITE: Regarding the content of the conver-
18 sation, what was your impression as to how long the conver-
19 sation lasted?

20 MS. SIDRANSKY: Maybe a minute -- a minute or two.
21 It was very short.

22 MR. WHITE: Do you recall whether you discussed
23 anything specifically about the case, specific items?

24 THE COURT: I rather you wouldn't lead her back
25 through whatever else you got that you could lead her with.

1 MR. WHITE: Rather that I don't lead her?

2 THE COURT: Yes. I didn't -- I don't see why you
3 should be able to.

4 MR. WHITE: I am trying to figure out how to do
5 this, Your Honor, I'm sorry.

6 THE COURT: I think it has been done.

7 MR. WHITE: You mentioned that one of the questions
8 had to do with whether the jury was getting along?

9 MS. SIDRANSKY: Yes.

10 MR. WHITE: What kinds of things was she interested
11 in about the jury?

12 MS. SIDRANSKY: I don't know. I said the jury got
13 along, and we didn't discuss the case, and that was the extent
14 of that.

15 THE COURT: I think you have finished. You got down
16 what her fresh recollections are, and that is what I want to
17 get. If you want to go ahead further some other time, you do
18 that some other time.

19 Mrs. Sidransky, I want to thank you for coming down
20 here. I understand your situation, and this is in no way
21 critical of you. I hope you don't feel -- continue to feel
22 bad about missing this --

23 MS. SIDRANSKY: I felt very bad because I missed
24 the time, and it was such a stupid thing to happen, and I
25 was so conscientious about coming anyhow. But then I got ill,

1 and I probably would have had to be off.

2 THE COURT: Well, the jury has been in there since
3 noon yesterday, and you might not have had much fun either.

4 So I want to thank you, and I don't want you to feel
5 bad.

6 MS. SIDRANSKY: Thank you very much.

7 - - -

8 Whereupon, Ms. Sidransky left the chambers.

9 - - -

10 THE COURT: While we are together, I had one thought
11 I wanted to explore with you. I gave them only one set --
12 I gave them one verdict form with Abbott's name on it and
13 one verdict form with each plaintiff's name on it. I am
14 getting kind of expert about how people in their situation
15 can go wrong. It has occurred to me that each juror might
16 feel some need to hand in his own form, which would multiply
17 by six the chance of mistake. I wanted to explore with you
18 before I did it sending a note to the jury which says in
19 words I hope they understand that you understand that you
20 are supposed to return one verdict form with respect to each
21 plaintiff, and that one verdict form is to be signed only
22 by the foreperson.

23 Does anybody see any problem with that?

24 MS. BONN: I think that was a good idea. I think
25 their impression is they will each fill out nine of those

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLUMBIA
3

4 JULIUS HOBSON, et al., :
5 Plaintiffs, :
6 v. : CA No. 76-1326
7 JERRY WILSON, et al., : VOLUME V
8 Defendants. :
9

10 Washington, D.C.

11 Wednesday, December 23, 1981

12 The above-entitled matter came on for trial before
13 the HONORABLE LOUIS OBERDORFER, United States District Court
14 Judge, in Courtroom No. 3.

15 APPEARANCES:

16 ON BEHALF OF THE PLAINTIFFS:

17 Mr. Daniel M. Schember, Esq.
18 Ms. J.E. McNeil, Esq.
19 Ms. Anne Pilsbury, Esq.

20 ON BEHALF OF THE FEDERAL DEFENDANTS:

21 Mr. David White, Esq.
22 Mr. Dennis F. Hoffman, Esq.

23 ON BEHALF OF THE DISTRICT OF COLUMBIA DEFENDANTS:

24 Ms. Laura Bonn, Esq.
25 Mr. George Barclay, Esq.

Official Reporter: Bruce W. Herzfeld

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Whereupon, the following proceedings were had at the bench:

THE COURT: I notice with respect to the verdicts involving Eaton and Booker and Miss Hobson that with respect to the District of Columbia defendants, they have returned a "no" verdict on conspiracy and individual liability, and have returned money damages. Have you noticed that?

MS. PILSBURY: No, I haven't.

I would request that that inconsistency be brought to the jury's attention, and they be given a chance to correct it.

THE COURT: Objections?

MS. BONN: Yes, we would object to the returning of the forms to the jury again. They had been instructed by the Court already twice to check over their forms to make sure that the verdicts they were rendering were, in fact, in line with the unanimous decisions made by the panel.

It would appear that the inconsistency is something which is inherent to the verdict itself and should not be cured at this point by once again sending them back.

MS. PILSBURY: There doesn't appear to be any logical basis for that inconsistency. I think since it is a good chance that it is a clerical error and they haven't had it brought to their attention, they should look at it. This is

1 a very complicated procedure.

2 THE COURT: Okay, I will instruct them further.

3 Do you have a record of the way it is now?

4 MR. WHITE: We have handwritten copies --

5 THE COURT: Let's stipulate as to what this was when
6 it was turned back at this time.

7 Have you got your copies of these three forms?

8 Why doesn't Miss Pilsbury compare these forms with
9 your version and make a copy of them for the record and call
10 them court exhibits, the next three numbers, and you can get
11 your copies back.

12 MS. PILSBURY: Their copy is correct on that, and
13 I was referring to Tina Hobson.

14 On Mr. Booker, the form that we have from the jury
15 now is different from the form that the defendants' counsel --

16 THE COURT: Look at that. He made a change with
17 respect to Suter.

18 MS. PILSBURY: The copy on Mr. Booker is consistent
19 with the copy that the jury has returned at this point.

20 Could I see Eaton's?

21 THE COURT: I would like to keep those as court
22 exhibits for a moment; that is, these three, and mark them
23 as court exhibits, and then if you will undertake to Xerox
24 them and return them for the record.

25 MS. PILSBURY: I would stipulate that the defendants'

1 copy of Eaton's form is consistent with the jury --

2 THE COURT: Mark these as court exhibits, next
3 numbers.

4 MR. WHITE: I might say, Your Honor, that we made
5 a copy that reflects only the first page --

6 THE COURT: I understand, that is all I want. You
7 may be seated.

8 - - -

9 Whereupon, the following proceedings were had in
10 open court:

11 THE COURT: Ladies and gentlemen, there is one
12 further problem with respect to the verdicts you have returned
13 in favor of Messieurs Booker and Eaton and Miss Hobson.
14 Your verdict form on page one indicates that with respect to
15 those three plaintiffs, claims against the defendants Acree,
16 Scrapper, Jagen, Suter, Mahaney, you find that they were not
17 liable on page one, and on page three you award damages with
18 respect to those defendants.

19 I am going to turn these three verdict forms to you
20 for further consideration. If you find that you would like
21 to have another blank -- three blank forms, I will furnish
22 them to you. If you find that you have commitments that make
23 it difficult for you to deliberate further tonight, we can
24 reconvene in the morning. I will hear from you on that when
25 you return to the jury room.

Whereupon, the jury left the courtroom at 5:05 p.m., and the Court recessed.

Whereupon, the following proceedings were had out of the presence and hearing of the jury:

THE COURT: I have a note that says, "The necessary corrections have been made," signed by the foreman.

Bring back the jury.

Whereupon, the jury entered the courtroom at 5:50 p.m., and the following proceedings were had in the presence and hearing of the jury:

THE COURT: Would the foreman please rise?

I have your note saying that the corrections have been made. Will you return the corrected form to the Marshal?

THE FOREMAN: Do you want the old ones?

THE COURT: Take the old ones, too.

The corrected forms are the ones in the envelope or out of the envelope?

THE FOREMAN: Outside the envelope.

THE COURT: Will the foreman please rise?

Your verdict as corrected in the case of Tina Hobson, you find against the defendant Brennan in the amount of \$9375; against the defendant Moore in the amount of \$7500;

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